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Sup Ct

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 21

**BACARDI CORPORATION OF AMERICA,
PETITIONER,**

vs.

Manuel V. Domenech

**~~RAFAEL SANCHE BONET~~, TREASURER, AND
DESTILERIA SERRALLES, INC.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT**

PETITION FOR CERTIORARI FILED FEBRUARY 29, 1940.

CERTIORARI GRANTED APRIL 22, 1940.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3455.

RAFAEL SANCHO BONET, Treasurer,
DEFENDANT, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

No. 3456.

DESTILERIA SERRALLES, Inc.,
INTERVENOR, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF PUERTO RICO,
FROM FINAL DECREE (COOPER, J.), JUNE 30, 1938.

TRANSCRIPT OF RECORD.

WILLIAM CATTRON RIGBY,
for Defendant, Appellant.
JAIME SIFRE, Jr.,
for Intervenor, Appellant.

EDWARD S. ROGERS,
JEROME L. ISAACS,
ROGERS, RAMSAY & HOGE,
THOMAS HUNT,
GASTON, SNOW, HUNT, RICE & BOYD,
for Appellee.

BOSTON:
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1939

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3455.

RAFAEL SANCHO BONET, TREASURER,
DEFENDANT, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

No. 3456.

DESTILERIA SERRALLES, INC.,
INTERVENOR, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

TRANSCRIPT OF RECORD OF DISTRICT COURT.

[FILED IN CIRCUIT COURT OF APPEALS APRIL 21, 1939.]

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF PUERTO RICO.

IN EQUITY No. 2238.

BACARDI CORPORATION OF AMERICA, PLAINTIFF,

v.

RAFAEL SANCHO BONET, TREASURER OF PUERTO RICO,
DEFENDANT.

BILL OF COMPLAINT.

[Filed July 31, 1937.]

*To the Honorable, the Judge of the District Court of the United
States for the District of Puerto Rico.*

Plaintiff, Bacardi Corporation of America, is a corporation duly
organized and existing under and by virtue of the laws of the

State of Pennsylvania and is a citizen of the State of Pennsylvania. Defendant, Rafael Sancho Bonet, is the Treasurer of Puerto Rico and is a citizen of the United States of America and of Puerto Rico, resident and domiciled in Puerto Rico, and is charged under the laws of Puerto Rico with the duty, among others, of administering the Alcoholic Beverage Laws of Puerto Rico.

The jurisdiction of this court is invoked upon the following grounds:

This is a suit arising under the Constitution of the United States; under the Organic Act of Puerto Rico approved March 2, 1917, being an act of Congress of the United States entitled "An Act to Provide a Civil Government of Puerto Rico and for other purposes", and under the Act of Congress of the United States approved August 29, 1935, known as the "Federal Alcohol Administration Act", as amended. This suit also arises under the trademark laws of the United States and under the Trade-mark Convention and Protocol for Trade-mark and Commercial Protection in effect between the United States and the Republic of Cuba. This is also a case of a civil nature between a citizen of the State of Pennsylvania and a citizen of Puerto Rico wherein the amount in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.

For its cause of action plaintiff states:

(1) In 1862 Facundo Bacardi established a distillery at Santiago

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de Cuba. He was succeeded by his three sons who formed a co-partnership under the name "Bacardi y Cia." In 1919 the business was incorporated under the laws of the Republic of Cuba as Compania Ron Bacardi, S. A., which corporation now conducts the said business of the production of alcoholic liquors, particularly rum, sold under registered trade-marks including the word "Bacardi", "Bacardi y Cia.", the representation of a bat in a circular frame, and certain distinctive labels.

(2) Sometime prior to 1915 an agency was established in New

York through which, before National prohibition, the Cuban company sold large quantities of Bacardi rum in the United States and expended large sums of money in advertising. Until National prohibition Bacardi rum was also sold in Puerto Rico. National prohibition deprived the Cuban company of its American market but it continued to produce and sell Bacardi rum in Cuba and elsewhere throughout the world under the trade-marks aforesaid, and after the repeal of prohibition, sales of Bacardi rum were resumed in the United States and Puerto Rico and have since continued.

(3) Bacardi rum is and always has been made according to definite processes and methods which are trade secrets. It is a product of high and recognized quality and enjoys an excellent reputation. The producers of Bacardi rum possess a valuable good will and property right in the name Bacardi and in the trade-marks and distinctive labels under which Bacardi rum has always been sold.

(4) The Cuban company after due and proper proceedings caused various of its trade-marks to be registered in the United States Patent Office, among them the following:

No. 302916, May 2, 1933, Bat Trade-mark.

No. 310654, March 6, 1934, Bacardi.

No. 327649, September 3, 1935, Bacardi y Cia.

No. 331459, January 7, 1936, Bacardi Labels and Medals.

No. ~~331460~~, January 7, 1936, Bacardi Labels and Medals.

No. 337254, August 4, 1936, Carta de Oro, Bacardi y Cia.

No. 338241, September 1, 1936, Carta Blanca, Bacardi y Cia.

These registrations are based upon corresponding Cuban registrations and are authorized by the Convention in effect between the United States and Cuba and by United States Statutes (U. S. Stat. at Large 46, Part 2, page 2907 and following; Act of Congress of February 20, 1905, U. S. C. Tit. 15 Sections 81 and 84).

All of said registrations are valid and subsisting and copies

thereof are attached hereto as Plaintiff's Exhibit Bacardi Registrations.

The Bacardi trade-marks were also duly registered according to law in the Office of the Executive Secretary of Puerto Rico, as follows:

No. 3916—Bacardi.

No. 3917—Bat Trade-mark.

No. 3918—Ron Bacardi, Superior Carta de Oro.

No. 3919—Ron Bacardi, Superior Carta Blanca.

All these registrations were made on April 10, 1935.

(5) On April 24, 1934 the Bacardi Corporation of America, plaintiff herein, was organized as a corporation under the laws of the State of Pennsylvania, for the following purposes:

The manufacture, production, distillation, redistillation, development, rectification, blending, mixing, purifying, recovering, flavoring, denaturization of alcohol or alcoholic liquid for beverage, industrial and other purposes; to buy, sell, trade and deal in, either at wholesale or at retail, export, import, hold, use, distribute, store and warehouse alcohol and alcoholic liquors for beverage, industrial, and other purposes, either as principal, agent, or factor.

The principal office and place of business of said corporation was established at 946 North Delaware Avenue, Philadelphia, Pennsylvania, and a Federal Rectifier's Permit was issued to the plaintiff on November 23, 1935, Permit No. R-542. Plaintiff also held Permit No. 538, Serial A-52 of the State of Pennsylvania. Plaintiff established itself in Pennsylvania because it had entered into certain arrangements with Pennsylvania Alcohol Corporation, a corporation having its principal place of business in Philadelphia, Pennsylvania, concerning the manufacture of distilled spirits. Plaintiff's relations with the Pennsylvania Alcohol Corporation proved unsatisfactory and plaintiff therefore decided to remove from Pennsylvania to Puerto Rico and in accordance with Federal Regulations, plaintiff voluntarily surrendered its Pennsylvania permit and its Federal permit was amended on March 28, 1936 by

the Federal Alcohol Administration to enable plaintiff to operate in Puerto Rico.

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(6) The plaintiff prior to February 1, 1936, viz.: on June 8, 1934, acquired from the Compania Ron Bacardi, S. A., for good and valuable consideration, the right to use the registered trade-marks of the Cuban company, including those hereinabove referred to, as provided by Article 11 of the Convention between the United States and the Republic of Cuba (U. S. Stat. at Large, Volume 46, page 2924) and Article 5 of the Protocol to said Convention; and the plaintiff also obtained from the Cuban company the disclosure of the secret processes and methods of producing Bacardi rum, and the plaintiff has brought to Puerto Rico technicians who have instructed plaintiff in the use of said secret processes and methods, and who actually supervise plaintiff's manufacture in Puerto Rico of rum of the same high quality and character as the product heretofore sold in the United States including Puerto Rico under the trade-marks heretofore set forth.

The label proposed to be used by plaintiff in Puerto Rico has been approved by the Federal Alcohol Administration under the Federal Alcohol Administration Act of August 29, 1935, Chapter 814, paragraph 1, 49 U. S. Stat. 977. A copy of such approval is attached hereto and marked "Plaintiff's Exhibit Approval of Label".

(7) Plaintiff is duly licensed to do business in Puerto Rico, having received from the Executive Secretary of Puerto Rico on March 31, 1936, a certificate of registration as a foreign corporation, and having furthermore received on April 6, 1936 from the Treasurer of Puerto Rico a license to do business in Puerto Rico, which license has been renewed from year to year and is still in force, all fees provided by the law for that purpose having been paid by plaintiff. Plaintiff also received from the Treasurer of Puerto Rico on July 20, 1936, permits for distilling, rectifying and warehousing alcohol. On March 6, 1936, the plaintiff entered into an agreement for the rental (with option of purchase) of the

five-story building owned by the Porto Rican American Tobacco Company situated on Marina Street, San Juan, for a period of three years at a rental of \$9,600 a year and brought from Cuba and Pennsylvania the necessary equipment and materials. Plaintiff installed a rectifying plant in the said building in the city of

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San Juan, all at an expense approximately of \$600,000, of which about \$45,000 was expended between April 6, 1936 and May 15, 1936. Attached hereto are photographs of plaintiff's establishment in San Juan marked "Plaintiff's Exhibit Photographs of Plaintiff's Plant".

Plaintiff has produced and accumulated in Puerto Rico a large stock of properly matured rum which it is now ready to bottle, label and sell; is prepared to do so, and has made commitments to its customers to sell them such product under the name Bacardi, and the various trade-marks heretofore set forth but will be prevented therefrom solely for the reasons hereinafter alleged.

(8) Very shortly after the plaintiff started operations in Puerto Rico, the Legislature of Puerto Rico passed an Act, Law No. 115, known as, "Alcoholic Beverage Law of Puerto Rico", approved May 15, 1936, and expiring September 30, 1936, the title of which Act reads as follows:

"AN ACT

To Provide Revenues for the People of Puerto Rico by Levying Internal-Revenue Taxes on Alcoholic Spirits and Alcoholic Beverages, and for the Manufacture and Sale Thereof; to Regulate the Production, Manufacture, Importation, and Sale of Alcohol, Spirits and Alcoholic Beverages, and to Provide License Fees Therefor; to Impose Penalties for Violations Hereof; to Provide Funds for the Administration and Enforcement of the Act; to Repeal Act No. 38, Approved July 30, 1935, Entitled 'An Act to Provide Revenues for the People of Puerto Rico by Levying Excise Taxes on Alcohol and Alcoholic Beverages, and Licenses for the Manufacture and Sale Thereof; to Regulate the Manufacture, Importation,

and Sale of Alcohol and Alcoholic Beverages; to Impose Penalties for Violations Hereof; to Repeal Act No. 1, Approved June 29, 1935; and for Other Purposes'; and for Other Purposes."

This Act contained the following provisions:

"Section 41.—The Treasurer of Puerto Rico shall not issue any license prescribed by this Act for any business establishment which is less than 25 meters from a public or private school.

B. After the thirty (30) days following the taking effect of this Act, no persons shall engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits in Puerto Rico, unless such person is provided with a permit by the Treasurer of Puerto Rico authorizing him to engage in said business. The Treasurer shall prescribe the form of said permits and shall specify on each one the authority conferred thereby, as well as the conditions under which the permit is granted, according to the provisions of this Act. To the extent which the Treasurer may deem necessary for the efficient

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administration of this Act, separate applications and permits shall be required by the Treasurer as regards the various branches of the industry, including distilling, rectifying, bottling, and other activities connected with the manufacture of distilled spirits, and as regards the different classes of persons entitled to permits under this title. The permits hereby prescribed are separate and distinct from the licenses required by virtue of other sections of the Act.

C. The following persons shall be entitled to permits upon application:

(1) Every person who on February 1, 1936, possesses a license or permit issued by the Government of Puerto Rico to engage in the business of distilling, manufacturing, rec-

tifying, and bottling, distilled spirits, and who is on that date engaged in said business.

(2) Any other person who may fully comply with the following requisites:

(a) To file with the Treasurer of Puerto Rico an application to engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits, which application shall be made in the manner prescribed by the Treasurer of Puerto Rico and shall contain, among other particulars, the following specific information:

(I) That such person, by reason of his business experience or because of his financial position or business relations, will possibly begin operations within a reasonable period of time and that he will operate his business in accordance with both the Federal and Insular Laws.

(II) That the demand for consumption in Puerto Rico and in the rest of the United States, for the class or classes of distilled spirits to be distilled, manufactured, rectified, or bottled, exceeds the production capacity of the holders of permits under this Act, priority to be given to such persons as may have received permits under clause C, paragraph 1, of this title, as well as to the production capacity of the holders of permits granted by the Federal Alcohol Administration to distill, rectify, bottle, and/or manufacture similar distilled spirits in continental United States.

(III) That the applicant has no intention to violate clause (h) hereinbelow transcribed.

(IV) That the applicant has no intention to violate clause (i) hereinbelow transcribed.

(V) That such business will not adversely affect those already established for the manufacture, distilling, rectifying, and bottling of distilled spirits in Puerto Rico.

Clauses (h) and (i) referred to under (III) and (IV) above, are as follows:

(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known

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by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.

(i) The production capacity of existing distilleries, manufacturing plants, and rectifying and bottling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title.

Clause (g) of the same title, referred to in (i) of the title, reads as follows:

(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided*, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured, in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico.

The plaintiff duly complied with the foregoing provisions of the Act, and at no time during the life of the said Act No. 115 did the plaintiff bottle any rum whatsoever, or use any label contain-

ing any brand, trade name or trade-mark in contravention of the foregoing section and sub-section.

(9) The third Special Session of the 13th Legislature of Puerto Rico, passed an Act, No. 6, known as "Spirits and Alcoholic Beverages Act" which repealed and superseded Act No. 115, approved June 30, 1936, to remain in force until September 30, 1937, the title of which act reads as follows:

"AN ACT

To Provide Revenue for the People of Puerto Rico by Levying Internal-Revenue Taxes on Alcoholic Spirits and Alcoholic Beverages, and for the Manufacture and Sale Thereof; to Regulate the Production, Manufacture, Importation, and Sale of Alcohol, Spirits and Alcoholic Beverages, and to Provide License Fees Therefor; to Impose Penalties for Violations Hereof; to Provide Funds for the Administration and Enforcement of the Act; to Repeal Act No. 115, Approved May 15, 1936; and for Other Purposes."

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This Act (No. 6) provides, in Section 44, the following:

Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formally known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided*, That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico, prior to the approval of this Act; and *Provided*, further, That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the

corresponding label containing the information prescribed by law and the regulations of the Treasurer.

During January, 1937, the plaintiff submitted to the Treasurer of Puerto Rico a proposed label for rum of the quality designated "consumo corriente", a product of less maturity than the high grade rum, which was intended for the lower price local market in Puerto Rico. Plaintiff received the approval of the Treasurer for the use of the "consumo corriente" label on January 27, 1937.

During the period since Act No. 6 took effect, all stocks of the high grade rum accumulating, were in the process of maturing for marketing under the regular Bacardi rum label, trade-marks, and brands which the plaintiff is authorized by the Cuban company to use and which are registered in the United States Patent Office, and in the office of the Executive Secretary of Puerto Rico as hereinbefore alleged.

(10) During the 1937 Regular Session of the Legislature of Puerto Rico an Act was passed, being Act No. 149, the title of which act reads as follows:

"AN ACT

To Amend Section 1 by Adding Section 1 (b) Which Declares the Principals and Policy of Act No. 6, Approved June 30, 1936, Entitled 'An Act to Provide Revenues for The People of Puerto Rico by Levying Internal-Revenue Taxes on Alcoholic Spirits and Alcoholic Beverages, and for the Manufacture and Sale Thereof; to Regulate the Production, Manufacture, Importation, and Sale of Alcohol, Spirits, and Alcoholic Beverages, and to Provide License Fees Therefor; to Impose

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Penalties for Violations Hereof; to Provide Funds for the Administration and Enforcement of the Act; to Repeal Act No. 115, Approved May 15, 1936; and for Other Purposes'; to Amend Section 40 of Said Act for the Purpose of Regulating the Use of Labels and of Imposing Conditions Upon Such

Persons or Entities as may Apply for Permits to Distill, Rectify, Manufacture, Bottle, or Can Rectified Spirits or Alcoholic Beverages in Puerto Rico; to Amend Section 44 of Said Act, by Imposing Conditions Upon the Holders of Such Permits; to Add Section 44 (b) to Said Act so as to Provide for the Volume of the Containers Used in Exporting Distilled Spirits From Puerto Rico; to Amend Section 97 of Said Act, by Providing for Remedies Before the Proper Courts; to Amend Section 106 of Said Act so as to Make it Effective Indefinitely, and to provide that this act shall take Effect Ninety Days After its Approval."

This Act was approved May 15, 1937, to take effect 90 days after approval *i. e.*, on August 13, 1937, which Act amended Act No. 6, approved June 30, 1936, as follows:

Section 1 of Act No. 149:

by adding in Section 1 (b) a "declaration of policy" to Section 1 of Act No. 6.

Section 2 of Act No. 149:

by amending Section 40 of Act No. 6 by adding to the label regulations provided in the said Section 40, additional requirements as to size of printing, size of certain phrases to be used; and providing, the additional requirements of relative sizes of printing of trademark or name of rum as compared to the printing of the name of manufacturer, distiller, etc., the amending additions to Section 40 of Act No. 6 being set forth in capital letters in the following transcription of Section 40 as amended:

"Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall

be obliged to have appear PROMINENTLY on the label the following phrase in English *Puerto Rican Rum*, in letters NOT LESS THAN FIVE-SIXTEENTHS ($5/16$) OF AN INCH HIGH AND OF LINES OF ONE-SIXTEENTH ($1/16$) OF AN INCH OR MORE IN WIDTH, SAID PHRASE TO BE NOT LESS THAN THREE (3) INCHES LONG. FOR CONTAINERS OF LESS THAN FOUR-FIFTHS ($4/5$) OF A PINT THE PHRASE *Puerto Rican Rum* MUST APPEAR ON THE LABEL IN LETTERS NOT LESS THAN ONE-EIGHTH ($1/8$) OF AN INCH HIGH, SAID PHRASE TO BE NOT LESS THAN ONE AND ONE-HALF ($1\frac{1}{2}$) INCHES LONG. On the label of every alcoholic beverage shall also appear the word distilled, rectified, or blended, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; PROVIDED, FURTHER, THAT THE TRADE

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MARK OR NAME OF THE RUM MUST APPEAR PROMINENTLY ON THE LABEL IN LETTERS OF A SIZE AT LEAST THREE TIMES THE SIZE OF THE LETTERS IN WHICH THE NAME OF THE MANUFACTURER, DISTILLER, RECTIFIER, BOTTLER, OR CANNER APPEARS."

Section 3 of Act No. 149:

by amending Section 44 of Act No. 6 by first substituting the following, in lieu of the Section of Act No. 6 quoted in paragraph 10 herein:

Section 3.—Section 44 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trademark, brand, tradename, commercial name, corporation name, or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or

any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; PROVIDED, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Section 4 of Act No. 149:

by adding a new sub section, number 44 (b) reading as follows:

"Section 44 (b).—Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; PROVIDED, That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof, the Treasurer is empowered to authorize the sale of such stock in barrels of 40 gallons or more, either for sale in Puerto Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith, for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is

made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the

Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled."

Section 5 of Act No. 149:

by minor and unimportant amendments of the existing Section 97 of Act No. 6 and;

by adding a new sub-section to Section 97 (b), reading as follows:

"Section 97 (b).—Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceedings as may be necessary, to demand protection against violations of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five (5,000) dollars nor more than thirty thousand (30,000) dollars."

Section 6 of Act No. 149:

by making Act No. 6 as amended by Act No. 149 a permanent law.

Section 7 of Act No. 149:

by providing an additional clause relative to Section 44, reading as follows:

"Section 7.—In regard to trademarks only, the provision in the 'directing' part of Article 44 of Law No. 6, approved on June 30, 1936, shall be applicable as is hereby amended, to those trademarks that have been used exclusively in continental United States by a distiller, rectifier, manufacturer, or packer of distilled spirits prior to February 1st, 1936, provided that said trademarks were not used in whole or in part by a distiller, rectifier, manufacturer or packer of distilled spirits outside of continental United States at any time prior to said date."

(12) Each one of the acts of the Legislature of Puerto Rico

hereinabove cited in paragraphs 8, 9 and 10 of this bill of complaint contains arbitrary, capricious and unreasonable restrictions, discriminations and prohibitions which, plaintiff is informed and believes and states the fact to be, were directed solely at the plaintiff and no other entity doing business in Puerto Rico. In Act No. 115 an attempt was made to prevent the plaintiff and the plaintiff only, from using the regular registered trade-marks or labels

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which plaintiff has the right to use. In Act No. 6, a more specific sole discrimination was attempted in Section 44 thereof, and finally in Act No. 149, the Legislature in an obvious attempt to cure every omission in previous legislation which failed to discriminate effectively and completely against this plaintiff provided a complete prohibition as against this plaintiff only of the use of any of its trade-marks, trade names or designations whatever in connection with its product; to prevent this plaintiff from benefiting in any way from the value and good will incident to its lawful use of the Bacardi name and trade-marks or in fact, to do any business whatsoever using its own name.

Attached hereto is a Memorial which was addressed to the Legislature of Puerto Rico in February, 1937, by certain persons calling themselves the "Puerto Rican Rum Producers", which document is marked "Plaintiff's Exhibit Memorial". The plaintiff submits this exhibit for the sole and only purpose of showing that the provisions of the Acts of the Legislature of Puerto Rico hereinbefore specifically referred to were directed against the plaintiff alone, but the plaintiff does not adopt any of the facts, reasoning or arguments set forth in the said Memorial.

(12) The provisions of Act No. 149 which are referred to generally in the preceding paragraph are as follows:

(a) Section 2 of the 1937 law amending Section 40 of Act No. 6 approved June 30, 1936, provides certain regulations and limitations upon labels specifying the contents of the said labels, the size of lettering thereon, and providing for regulations thereunder

by the Treasurer of Puerto Rico, all of which is inconsistent with similar and controlling provisions of the Federal Alcohol Administration Act and proper regulations thereunder, which Act, as amended, is paramount and mandatory in Puerto Rico. Section 2 furthermore purports to regulate or provide the means of regulation of the labels of the plaintiff which holds Federal licenses granted to it by the Federal Government and the approval of plaintiff's labels by the Federal Alcohol Administration, hereinabove set forth. No label used in Puerto Rico by this plaintiff or by anyone can in any respect depart from the controlling regulations of the Federal Alcohol Administration. This section of Act

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No. 149 manifestly discriminates against this plaintiff by requiring that the brand name be three times the size of the name of the manufacturer. Plaintiff's brand name registered as a trade-mark and used on the labels in the United States and in Puerto Rico and which plaintiff is authorized by the owner thereof to use is "Bacardi" which is part of the name of the manufacturer.

Paragraph (b) Section 4 of Act No. 149 adds a new provision to Act No. 6 prohibiting the exportation and shipment to United States of distilled spirits, etc., in containers holding more than one gallon and plaintiff alleges that the purpose of said Paragraph (b) is to prevent this plaintiff from exporting its product in bulk from Puerto Rico and in using its labels and trade-marks which it has a right to use on the product manufactured by it in Puerto Rico and bottled elsewhere. This paragraph is illegal, unconstitutional and void, since it contravenes the Federal Alcohol Administration Act, and violates the Commerce Clause and the Fourteenth Amendment of the Constitution of the United States and also violates the due process clause of the Organic Act of Puerto Rico.

(c) Section 5 of Act No. 149 amends Section 97 of Act No. 6 approved June 30, 1936 by providing in Sub-section (a), in substance, a duplication of Section 97 of Act No. 6 and adding thereto Sub-section (b), whereby any holder of a permit may apply to a

court of competent jurisdiction through such ordinary and extraordinary proceedings as may be necessary to demand protection against violations of said Act on the part of other persons upon the giving of a bond in an amount not less than \$5,000 nor more than \$30,000. This sub-section permits the enforcement of the Act at the instance of a private person or common informer and in accordance with that person's private conception of the purport of the Act, even where such person may have sustained no legal damage whatever; and also by means of this general delegated authority effectually eliminates from such proceedings the designated administrative officers particularly the Treasurer of Puerto Rico, whose function it is to interpret and enforce the said Act, and thus subjects plaintiff to a multiplicity of suits. The additional provision in Sub-section (b) for bond limited as to minimum and maximum amount and placing the maximum at \$30,000 is manifestly an arbitrary and illegal attempt by the Legis-

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lature to deprive the courts of discretion to protect litigants. And plaintiff is informed and believes that holders of permits upon the coming into effect of said Act No. 149, on August 13, 1937, and thereafter, will file numerous and vexatious suits against this plaintiff with the sole purpose of destroying the business of the plaintiff in Puerto Rico, without posting bonds in sufficient amounts to answer for the damages caused thereby to the plaintiff.

20 (d) Section 3 of Act No. 149 amends Section 44 of Act No. 6 and was enacted not only specifically to prevent this plaintiff from conducting its business in Puerto Rico but to cure what this plaintiff believes was an oversight in both Acts hereinabove referred to. Section 3 more effectually deprives this plaintiff of its trademarks and the valuable good will appurtenant thereto than was effected by Section 44 of Act No. 6. The previous Acts failed to take from the plaintiff every remaining vestige of its property rights. This oversight has been cured by the prohibition in Section 3 of Act No. 149 prohibiting the use of any designation whatever to indicate the source or origin of plaintiff's product. This

result is attained by the provisos in Section 3 and in Section 7 of Act No. 149 and is applicable solely to this plaintiff. Plaintiff is informed, and believes and states the fact to be that subsequent to the passage of Section 3 it was discovered that one foreign entity other than plaintiff could not in fact qualify and continue in business under Section 3 because its trade-mark was not used in Puerto Rico before February 1, 1936, but it was presumably then discovered that this other entity differed from this plaintiff in that its manufacture had been confined to continental United States and its trade-mark had been used only in continental United States prior to February 1, 1936, whereas the trade-marks proposed to be used by plaintiff and which it is authorized to use, had been used not in continental United States only but in the Republic of Cuba and elsewhere, thereby making the combination of Sections 3 and 7 of Act No. 149 completely discriminatory against this plaintiff, and applicable to no one else. These combined sections permit all other entities, foreign and domestic, except the plaintiff, to con-

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tinue operation without restriction. Thereby, they deprive this plaintiff of the equal protection of the law guaranteed by the Constitution of the United States and the Organic Act of Puerto Rico and in addition they deprive this plaintiff of its property without due process by preventing the use of its name and trade-mark and the benefit of a valuable good will which such name and trademark symbolize.

(13) On February 20, 1929 there was signed and approved a Convention and Protocol by the United States and other American Republics for Trade-mark and Commercial Protection (U. S. Statutes at Large, Vol. 46, Part II p. 2907, Treaty Series 833). Said Convention has been duly ratified and proclaimed between the United States and the Republic of Cuba and is in full force and effect between such countries and, with respect to the United States, under Article VI, Clause 2 of the Constitution, is the supreme law of the land. Article XI of the Convention aforesaid provides that "the use and exploitation of trade-marks may be

transferred separately for each country" and Article 5 of the Protocol thereto provides for the transfer or assignment of trade-marks, "it being understood that the use of trade-marks may be transferred separately in each country". Article 3 provides that every trade-mark duly registered in one of the contracting states shall be admitted to registration or deposit and legally protected in the other contracting states.

The trade-marks of the Cuban company have been duly registered in the Patent Office in conformity with the United States Statutes, under the terms of this and prior conventions. Certain of these trade-marks have also been registered under the laws of Puerto Rico in the Office of the Executive Secretary. Act No. 149 of 1937 prohibits the use of said trade-marks by the plaintiff and therefore, deprives the plaintiff of rights under the Convention aforesaid and of the Act of Congress of February 20, 1905. The said Act No. 149 prohibiting the plaintiff from using said registered trade-marks is contrary to the purpose of the Convention between the United States and the Republic of Cuba, which is to insure international protection and unobstructed use of the trade-marks of the nationals of the contracting states. Act No. 149 not

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only frustrates the intent of said Convention but might provoke retaliatory action against American citizens by other countries signatories to that Convention.

(14) The value of the right of which plaintiff will be deprived by the enforcement of the said Act No. 149 of 1937 is greatly in excess of \$3,000, exclusive of interest and costs. Said Act involves the destruction of plaintiff's name and the right to trade-marks worth in excess of several million dollars, the right to use which plaintiff has lawfully acquired.

(15) Defendant Rafael Sancho Bonet is Treasurer of Puerto Rico and is charged under the laws of Puerto Rico with the duty of executing them including Act No. 149 and the Act which it purports to amend; that said Acts in the particulars hereinbefore

alleged are unconstitutional and void and the acts themselves and the execution thereof will irreparably damage this plaintiff.

(16) Plaintiff is damaged by the said Acts and the execution thereof by the defendant, in the following particulars among others:

Plaintiff cannot undertake any plans for future operation or obtain such further supplies and equipment as will be indispensable for the carrying on of its business in Puerto Rico. By reason whereof it cannot continue to make rational plans for the future.

Plaintiff is now ready to ship in bulk to the United States a considerable amount of rum distilled in Puerto Rico and held here on hand by the plaintiff, but plaintiff will be prevented from so doing and will thereby suffer considerable damage on account of the unreasonable, arbitrary, illegal and unconstitutional provisions of said Acts limiting the size of containers prescribed for shipments from Puerto Rico to continental United States.

Plaintiff is now ready to ship in excess of 10,000 cases of bottled goods per month, amounting to upwards of \$100,000 in value. The salability of such product will be greatly lessened, if plaintiff is prevented from using in connection therewith the trade-marks and names which plaintiff has the right to use and which represent

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a valuable good will, and the product aforesaid is in fact of the same high quality and character as the product heretofore sold in the United States including Puerto Rico under the name Bacardi.

(17) Plaintiff avers that the following sections of Act No. 149 are unconstitutional and void:

Sections 2, 3, 4 and 5 (insofar as Section 5 adds sub-section (b) to Section 97 of Act No. 6) and Section 7 of Act No. 149, approved May 15, 1937, and such sections of Act No. 6 of 1936 as any of the aforesaid sections purport to amend because they and each of them are contrary to and violate

1. The Fifth and Fourteenth Amendments to the Constitution of the United States and the Commerce Clause thereof, Article 1, Section 8, Clause 3.

2. Section 2 and 9 of the Organic Act of Puerto Rico approved March 2, 1917, Chapter 145, Laws of 1917.
3. The "Federal Alcohol Administration Act", approved August 29, 1935, as amended.
4. The Convention between the United States and Cuba. Treaty Series, 833, U. S. Statutes at Large, Vol. 46, page 2907, signed February 20, 1929, proclaimed by the President of the United States, February 27, 1931.

Section 44 of Act No. 6 is also void and of no effect because the subject matter of said section is not embraced in the title of said Act, as required by Section 34 of the Organic Act of Puerto Rico. That Sec. 44-B is also null and void because it is contrary to Section 34 of the Organic Act of Puerto Rico, as the subject matter of that Section is not mentioned in the title of the Act.

The plaintiff has no plain, complete and adequate remedy at law.

Wherefore, the plaintiff prays—

(a) That the defendant be required to answer this bill of complaint (answer under oath being waived).

(b) That this court declare that the sections of Act No. 149 and each of them specified herein are unconstitutional and void.

(c) That the defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, and all others having authority to enforce said Act and each of them and all persons acting in concert with them or by, through or under them and all holders of permits under Act No. 149 of May 15, 1937 and laws amended

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thereby, be enjoined, at first during the pendency of this suit and afterward perpetually from enforcing or attempting to enforce against this plaintiff the provisions of Sections 2, 3, 4 and 5 (insofar as Section 4 adds sub-section (b) to section 97 of Act No. 6), and Section 7 of Act No. 149, approved May 15, 1937, and such sections of Act No. 6 of 1936 as any of the aforesaid sections purport to amend.

(d) That the court issue an order directed to the defendant to show cause, if any he has, at such time as court may think proper, why a preliminary injunction should not issue in this case.

Plaintiff also prays for such other and further relief as the court may deem proper.

Plaintiff prays the usual process of this court directed to the defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, to appear and answer this bill of complaint and abide the further orders of the court.

DANIEL F. KELLEY,

HARTZELL, KELLEY & HARTZELL,

by RAFAEL FERNANDEZ,

Solicitors for Complaint.

UNITED STATES OF AMERICA.

TERRITORY OF PUERTO RICO,

CITY OF SAN JUAN.

Jose M. Bosch, being first duly sworn upon oath deposes and says that he is the vice-president of the Bacardi Corporation of America, complainant in the foregoing bill of complaint; that he has read said bill and knows the contents thereof, and affiant states that the averments therein contained are each and all true of his own knowledge, except those alleged on information and belief and these he believes to be true.

This verification is made by deponent and not by complainant for the reason that complainant is a corporation.

JOSE M. BOSCH.

Affidavit No. 1433.

Subscribed and sworn to before me by the said Jose M. Bosch, on this thirtieth day of July, 1937.

JUVENAL SOSA.

25-cent excise tax cancelled by notarial seal.

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25
PLAINTIFF'S EXHIBIT BACARDI REGISTRATIONS.

Registered May 2, 1933

Trade-Mark 302,916

UNITED STATES PATENT OFFICE

COMPANIA RON BACARDI, S. A., OF SANTIAGO DE CUBA, CUBA

ACT OF FEBRUARY 20, 1905

Application filed October 24, 1932. Serial No. 231,692.



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago de Cuba city, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and present herewith five specimens showing the trade-mark as actually used by applicants upon the goods, and request that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since January, 1915.

Applicant is the owner of international registration No. 172, June 20, 1920, and U. S. registration No. 284,224 to 284,228, inclusive, June 16, 1931.

No claim is made to the words "Trade Mark" appearing on the drawing.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

Said trade-mark has been registered in the Republic of Cuba, Number 30,639, January 12, 1930.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoint John Imirie, of Munsey Building, Washington, D. C., its attorney, with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

[L. S.]

COMPANIA RON BACARDI, S. A.
By PEDRO E. LAY,
Vice President.

Registered Mar. 6, 1934

Trade-Mark 310,654

UNITED STATES PATENT OFFICE

Compañía Ron Bacardi, S. A., Santiago de Cuba,
Cuba

Act of February 20, 1905

Application November 12, 1923, Serial No. 343,592

BACARDI

STATEMENT

To the Commissioner of Patents:

Compañía Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, and located at Santiago de Cuba, Cuba, and doing business at Agullera baja 32, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark has been continuously used and applied to said goods in applicant's business since 1862. The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

The mark has been in actual use as a trade-mark by the applicant and applicant's predecessors from whom title was derived for ten years next preceding February 20, 1905, and such use has been exclusive.

Applicant is the owner of international registration Nos. 172, dated June 29, 1920; 176, dated June 29, 1920; 503, dated June 30, 1921; and U. S.

registrations Nos. 284,228 dated June 16, 1931; 284,227 dated June 16, 1931; 302,916 dated May 2, 1933; 302,976 dated May 2, 1933; 284,226 dated June 16, 1931; 284,225 dated June 16, 1931; 284,234 dated June 16, 1931; and 285,306 dated July 21, 1931, and 20,172 dated September 20, 1891.

Said trade-mark has been registered in the Republic of Cuba, No. 30,513 April 30, 1929.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By LUIS J. BACARDI,
Vice-President.

Registered Sept. 3, 1935

27
Trade-Mark 327,649

UNITED STATES PATENT OFFICE

Compañia Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application April 11, 1934, Serial No. 349,823

BACARDI Y CIA

STATEMENT

To the Commissioner of Patents:

Compañia Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30, Aguilera Baja Street, Santiago, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and request that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The mark has been in actual use as a trade-mark by the applicant and applicant's predecessors from whom title was derived for ten years next preceding February 20, 1905 to-wit 1892, and such use has been exclusive.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed there-

on. Applicant is the owner of registration No. 310,654.

An application for registration of said trade-mark was filed in Cuba on April 3rd, 1934, registered May 24, 1935, No. 44,339.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designate, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney with full power of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,
By LUIS J. BACARDI,
Vice President.

25
Registered Jan. 7, 1936

Trade-Mark 331,459

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application December 21, 1934, Serial No. 359,539



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1905, and 1922, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

The drawing is lined to represent the color gold. Applicant is the owner of the following registrations: 284,234 Compania Ron Bacardi, S. A., June 16, 1931; 284,225 Compania Ron Bacardi,

S. A., June 16, 1931; 284,228 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was granted August 14, 1935, No. 54,838.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By PEDRO E. LAY,
Vice-President.

Registered Jan. 7, 1936

29
Trade-Mark 331,460

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application December 21, 1934, Serial No. 289,538



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1899. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895, and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

The drawing is lined to represent the color gold.

Applicant is the owner of the following registrations: 294,224 Compania Ron Bacardi, S. A.,

June 16, 1931; 294,225 Compania Ron Bacardi, S. A., June 16, 1931; 294,226 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,656 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was registered August 14, 1935, No. 54,839.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.

By PEDRO E. LAY,
Vice President.

UNITED STATES PATENT OFFICE

Compañia Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application April 11, 1934, Serial No. 349,222

CARTA DE ORO BACARDI Y CIA

STATEMENT

To the Commissioner of Patents:

Compañia Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago de Cuba city, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since 1887; and the words "Bacardi y Cia" have been used since 1862.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. Applicant is the owner of registrations No. 310,654, and No. 284,228.

An application for registration of said trade-mark was filed in Cuba on April 3, 1934, and registered January 27, 1936, No. 55,526.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceeding affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By LUIS J. BACARDI,

Vice President.

Registered Sept. 1, 1936

31
Trade-Mark 338,241

UNITED STATES PATENT OFFICE

Compañía Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application April 11, 1934, Serial No. 349,225

CARTA BLANCA
BACARDI y CIA

STATEMENT

To the Commissioner of Patents:

Compañía Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30, Aguilera Baja Street, Santiago, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 40, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since 1887; and the words "Bacardi y Cia" since 1862.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. An application for registration of said trade-

mark was filed in Cuba on April 3rd, 1934, registered November 28, 1935, No. 55,273. Applicant is the owner of registrations No. 310,654, and No. 284,225.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceeding affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPAÑIA RON BACARDI, S. A.
By LUIS J. BACARDI,
Vice President.

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PLAINTIFF'S EXHIBIT APPROVAL OF LABEL

Form L 5 Treasury Department.
Federal Alcohol Administration February, 1936.

**CERTIFICATE OF APPROVAL OF LABELS OF DOMESTICALLY BOTTLED
DISTILLED SPIRITS.**

Date May 18, 1937.

Pursuant to the application of Bacardi Corporation of America, whose address is San Juan, Puerto Rico, the labels affixed to the reverse side hereof covering Carta De Plata (brand name), Puerto Rican Rum (class and type of distilled spirits) are hereby approved.

Labels identical with those affixed to the reverse side hereof except in respect to size, and statement of net contents appearing thereon in conformity with Section 37 of Regulations 5, are also approved for use on bottles which conform to the requirements of Article VII of Regulations 5.

A separate label, known as the government label, prepared in conformity with circular letter FA-41, and containing the mandatory label information required by Section 32 (c) of Regulations 5, (may, but need not) be used on bottles bearing the labels hereby approved.

Distilled spirits in bottles bearing the labels hereby approved and the proper government label, if required, are authorized to be removed from the plant where bottled.

This certificate shall not operate to relieve any person from liability for any violation of the Federal Alcohol Administration Act, or regulations thereunder resulting from the failure of any bottle bearing the labels herein approved, or the contents of such bottle, to conform to the statements and representations made on such labels.

W. E. ALEXANDER, RWR Administrator,
Federal Alcohol Administration Washington, D. C.

PLAINTIFF'S EXHIBIT APPROVAL OF LABEL.

CARTA DE PLATA

PUERTO RICAN RUM

Ron Superior

DISTILLED & BOTTLED BY

BACARDI CORP.

OF AMERICA

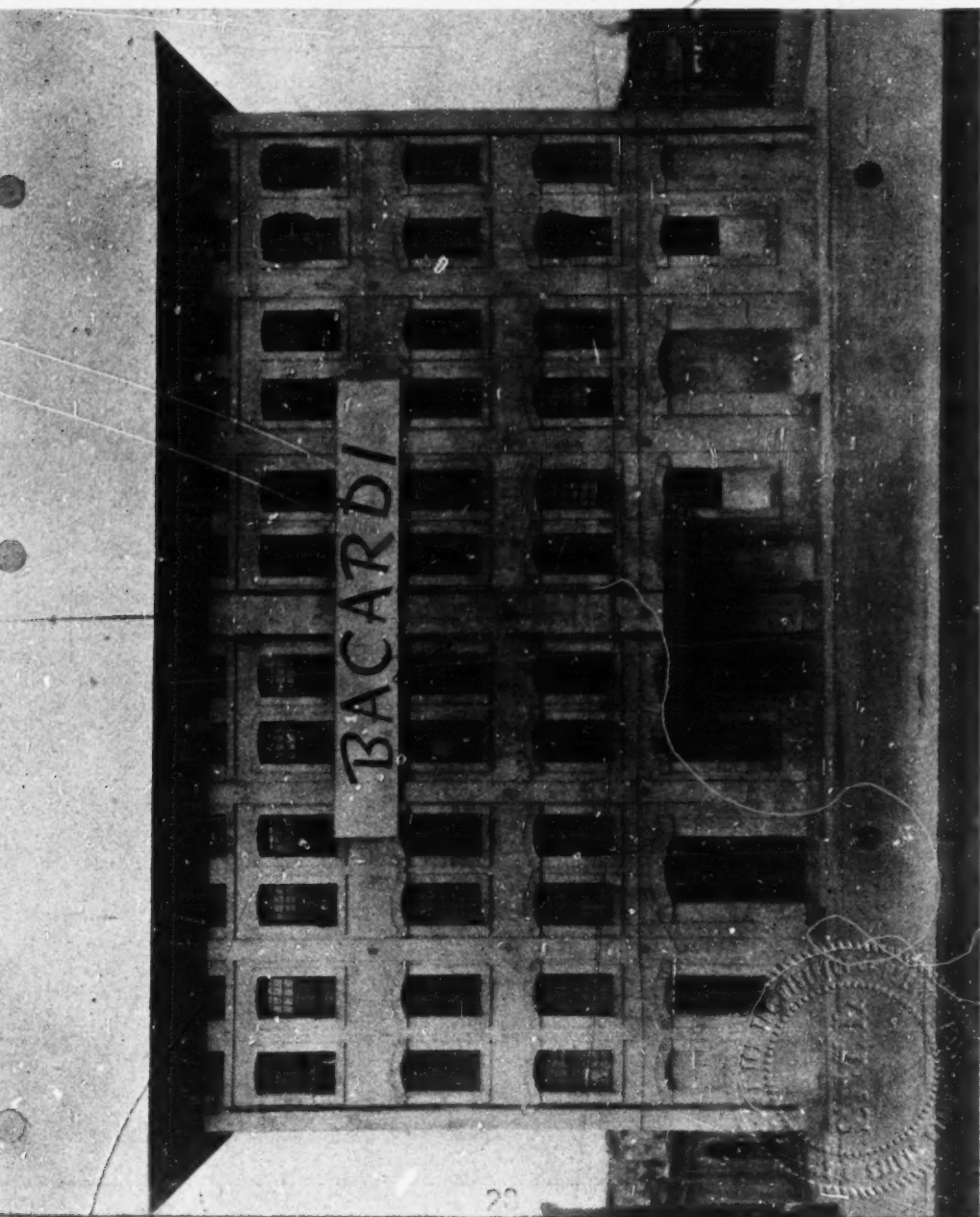
SAN JUAN, P.R.

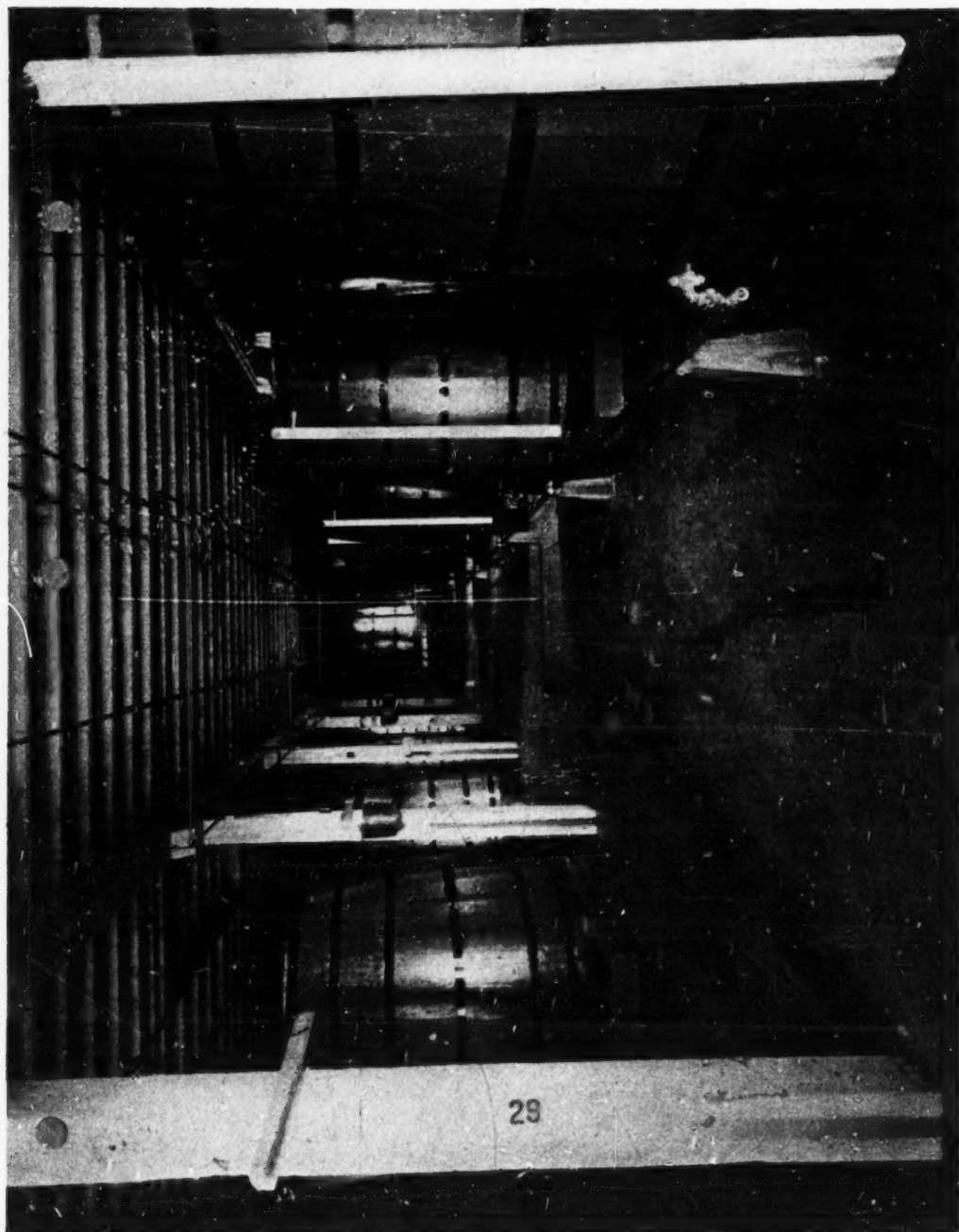
89 PROOF - 4/5 QUART

Produced in Puerto Rico by special authority and under the supervision of
BACARDI & CO., SANTIAGO DE CUBA

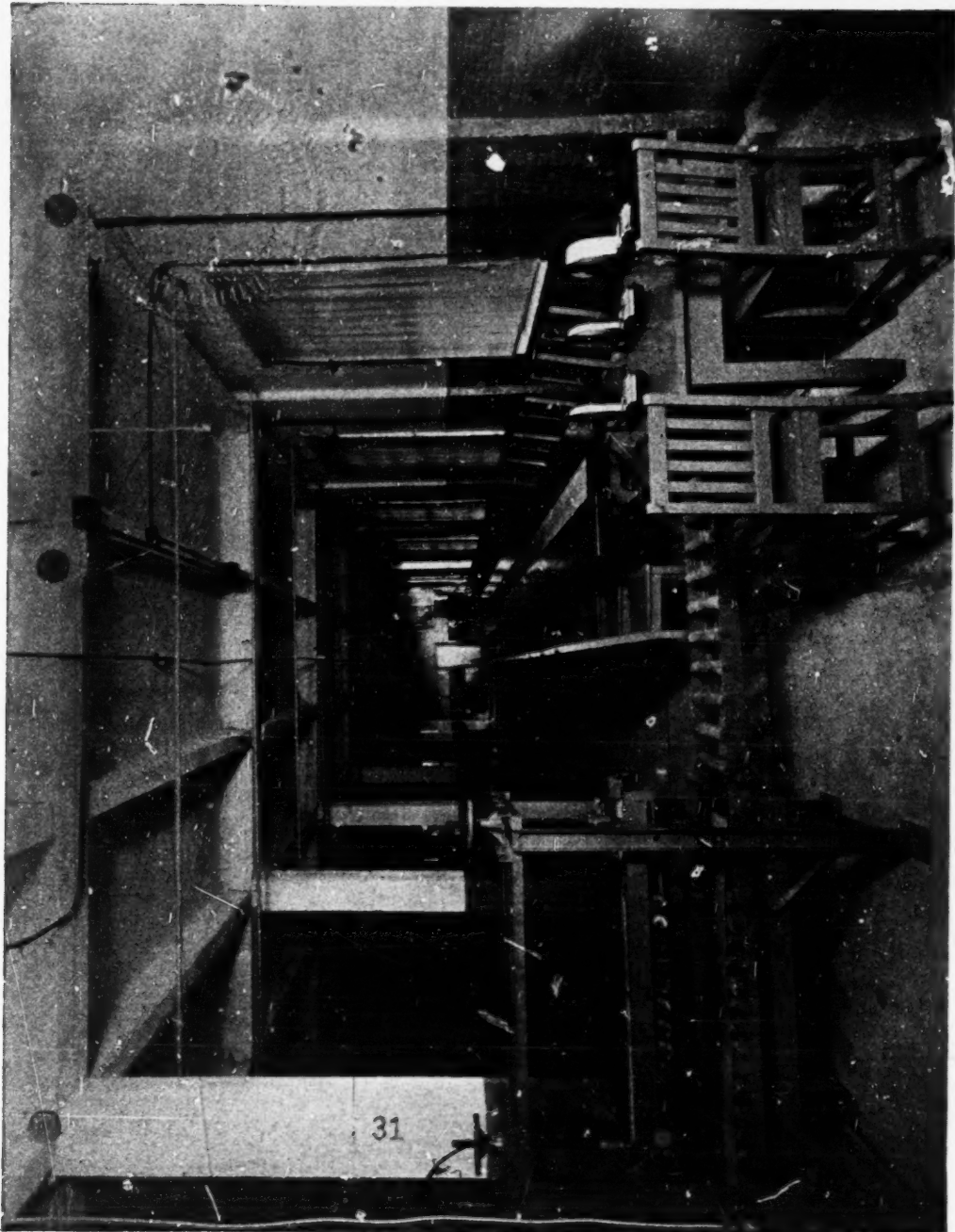
SOLE DISTRIBUTORS IN USA SCHENLEY IMPORT CORP NEW YORK N.Y.

PLAINTIFF'S EXHIBIT PHOTOGRAPHS OF PLAINTIFF'S PLANT.









PLAINTIFF'S EXHIBIT MEMORIAL.

MEMORIAL ADDRESSED TO THE LEGISLATURE OF PUERTO RICO BY PUERTO RICAN RUM PRODUCERS.

Honorable Sirs:

The undersigned, producers of Puerto Rican rum, have the honor to address this memorial to you seeking a fair protection for an industry which, although at the inception of its development, has a brilliant future, to be of great economic benefit to the community, should the Legislature of Puerto Rico, ever attentive to whatever spells progress and well-being, give it all the encouragement it merits.

Antecedents.

First.—The 18th Amendment to the Constitution of the United States prohibiting the manufacture, sale, and transportation of intoxicants became effective as of January 29, 1920.

Second.—Since March 2, 1918, the Island of Puerto Rico, through a mandate of its electorate, had adopted "prohibition".

Third.—The 21st Amendment to the Constitution of the United States repealed the 18th Amendment thereof, and such repeal was effective as of December 5, 1933.

That is to say that Puerto Rican capital was prohibited from engaging in the liquor business during a long period of 15 years, 9 months and 3 days. Meanwhile, during the same period of time, the other islands of the West Indies, with Cuba leading, profited from a very lucrative liquor business.

Fourth.—Rum made in Cuba and other rum-producing countries pay, upon entering the United States market, the sum of \$4.80 per case.

This means that Cuban rum, for example, when sold in the United States, has to cost \$4.80 more per case to the consumer of that kind of beverage. This protection of \$4.80 per case is the one enjoyed by Puerto Rican rum, at present, over and above that of the other rum-producing countries which contemplate capturing the immense market of the United States.

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Fifth.—On May 15, 1936 the Legislature of Puerto Rico approved Law No. 115 whose short title was "Alcoholic Beverage Law of Puerto Rico".

Section 41 thereof provided:

"C.—The following persons shall be entitled to permits upon application:

.....
 (2) Any other person who may fully comply with the following requisities:

.....
 (II) That the demand for consumption in Puerto Rico and in the rest of the United States, for the class or classes of distilled spirits to be distilled, manufactured, rectified, or bottled, exceeds the production capacity of the holders of permits under this Act, priority to be given to such persons as may have received permits under clause C, paragraph 1, of this title, as well as to the production capacity of the holders of permits granted by the Federal Alcohol Administration to distill, rectify, bottle, and/or manufacture similar distilled spirits in continental United States.

.....
 (V) That such business will not adversely affect those already established for the manufacture, distilling, rectifying, and bottling of distilled spirits in Puerto Rico.

.....
 (g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; **Provided, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand, trade name, or trade-mark used by a manufacturer, rectifier, distiller or bottler of**

distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico.

(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico."

Sixth.—At its extra session of 1936, the Legislature repealed the law above transcribed in part through Law No. 6 of June 30 of the said year. This latter law—which is now in full force and effect—contains the following provision:

"Section 44—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name

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has been used on similar products manufactured in Puerto Rico or outside of the Island; **Provided**, That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act;" . . .

Protection is Evident

The provisions of these two laws clearly reveal one same spirit: that of protecting the infant liquor industry of Puerto Rico. Furthermore: article 40 of Law No. 6 above cited provides, in an imperative manner, that our rum-producers shall be obliged to have appear on the label the following phrase in English: "Puerto Rican Rum". All these facts indicate that the mind of the Puerto

Rican legislator was bent upon the United States market, and imply at the same time a policy, inspired by a sane and natural patriotism, to protect a native industry through every legal mean at his command.

While it is true that certain foreign trade names enjoy a much wider reputation in the United States today than do those established recently by local interests, it is nevertheless a fact that these local interests are able to compete for the United States market by reason of the fact that they are protected by tariff walls from encroachment by foreign enterprises, thereby permitting them to sell their merchandise in the Continental market at a price substantially lower.

An Attractive Price Controls

Granting that quality is the same, then, a difference in price, regardless of a brand name, makes an article attractive from a purchaser's standpoint. Yet, a certain amount of advertising, necessary to foster a demand for the cheaper product, explaining the reasons for the difference in price creates a very favorable impression with the purchasing public, an impression which in time nullifies the advantage enjoyed by the foreign producer. This advantage can be attributed solely to a trade name made famous during the year when it was unlawful for native capital to engage in similar enterprises.

This policy is now pursued by rum manufacturers in Puerto Rico on a cooperating basis with the paramount idea of advertising to the consuming public the fact that Puerto Rican rum is superior in quality to that produced in any other part of the West Indies, thereby creating, not only a market for our native rum but making the entire purchasing public in the United States conscious of the fact that Puerto Rico is part of that great nation. Thus, a market is also created for any one in Puerto Rico who has something to sell to the American public.

Puerto Rican Rum Leads

We wish to point out that it is the aim of the distiller in Puerto Rico to make the American public conscious of the Island of

Puerto Rico. This policy has been unanimously agreed upon by the local distillers and is now being practiced in all advertising which is being released by any of them.

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The adoption of such a policy has produced the very definite and flattering results of placing Puerto Rican rum in demand in the United States market to the extent where it is today: **it is outselling by 15% the total of all other rums combined imported in the United States.**

These figures are published by the United States Customs Service at the port of New York. They can be substantiated at any moment. It is consequently obvious that the bulk of the business which formerly went to foreign manufacturers is now enjoyed by the Puerto Rican producers. This being the case, it obviously must follow that, since this business is being enjoyed by local capital, the local capital is paying Internal Revenue taxes on this liquor which is exported to the United States directly. Since the existing market was captured by the Puerto Rican rum-producer, all the revenue from the sale of all the product in the United States is now being collected by the Treasurer of Puerto Rico **in crescendo.**

Results to Which Foreign Competition Would Lead

Should the foreign producer be allowed to locate in Puerto Rico, all he can offer is that he will take away a large part of the market from the native producer. The revenue now being paid by the local producer from his sales in the United States (a revenue which is covered into the Insular Treasury) will be paid partially by the foreign manufacturer and partially by the surviving local producer. In other words, the same amount of revenue will be collected by the Insular Treasury. There will be a substitution of taxpayers: the local producer will yield his place to the foreign manufacturer.

On the other hand, the foreign manufacturer is in no way interested in building up a name for fine quality rum produced in

Puerto Rico, as he already enjoys a name for producing fine rum. He is merely interested in coming to Puerto Rico because others have built a favorable name in the United States market due to advertising by local capital interested in the rum business and simultaneously interested in the general welfare of Puerto Rico.

It must also be remembered that certain moneys are today collected by Customs authorities on foreign rum imported to this Island. Revenues collected from this source at present amount to well over \$100,000; but should the foreign manufacturer be permitted to locate in Puerto Rico that revenue will no longer be available as no customs duties will be paid on the product.

Why Puerto Rico is Chosen

Since this condition is rapidly becoming established throughout the United States and since Puerto Rico presents a favorable location due to the political fact that it is one of the islands in the West Indies which is not separated from the United States by tariff barriers, then it becomes the only favorable spot where a foreign manufacturer can locate and take advantage of a condition created by the undersigned and which rightfully belongs to Amer-

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ican and Puerto Rican capital by reason of the fact that they are entitled to the highest degree of protection because they were prevented from carrying on the rum industry during the era of prohibition in the United States when it was unlawful for them to build a favorable reputation which they are now rapidly acquiring through the medium of advertising—an advertising which has cost nothing to the foreign producer.

Our Contribution to the Treasury

We also wish to point to the fact that according to United States Bureau of Internal Revenue figures, for the year beginning June 30, 1934 and ending June 30, 1935, there was imported to the United States from all rum-producing countries, approximately 200,000 cases of rum. This represents approximately \$1,000,000

in excise-tax revenue. Against these figures a certain local producer has already paid the Insular Government nearly **half a million dollars**, during the calendar year 1936, in United States Internal Revenue Taxes. Based on these figures, it is safe to estimate that all local distillers combined will pay **one million dollars** to the Insular Treasury during the calendar year of 1937. This is equal to the total income derived from all imported rum to the United States during the fiscal year above mentioned. Other local distillers are rapidly coming into the continental United States market, thereby increasing the collection of United States Internal Revenue Taxes by the Treasurer of Puerto Rico.

The Fallacies Which are Broadcast

A certain foreign producer who is now interested in locating in Puerto Rico has mentioned the fact that he will offer employment to more than 300 workers in his plant. This statement can be very seriously doubted, but even though we grant that this number of workmen may be employed, it is a fact that today more than 1,500 workers are being employed by the existing rum industry in Puerto Rico.

Should this foreign producer be allowed to come to Puerto Rico he will enjoy a singular advantage because of his world famous name which will strangle the local industry before it has had an opportunity to really getting started. It must necessarily follow that although 300 workers may be employed by the foreign producer, the present number of employees, amounting to approximately 1,500, must inevitably lose their positions because of the inability of the infant industry to compete now against a product which has been on the market and acquired a favorable reputation over the years when our local industry was prevented from making itself known.

The distinctive name as well as the individual character of Puerto Rican rum must inevitably become suppressed by the foreign manufacturer's known trade-name which is not connected in any way with Puerto Rico but is rather known as a product of one of

the other West Indies islands which is not a part of the United States. Obviously, the foreign producer would never have considered coming to Puerto Rico were it not for the fact that Puerto

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Rican rum is hurting his business and taking a large part of the market in continental United States which the foreign producer previously enjoyed exclusively to himself. Because of tariff protection, the local industry has gradually been able to establish a reputation for itself and a favorable name which is driving the foreign producer to locate on American soil if he wishes to retain the lucrative market in the United States. This foreign producer has already attempted to locate within the boundaries of the continental United States in the city of Philadelphia, where he failed in his plans.

It has been argued also that the foreign producer, if he is not allowed to locate here, will go elsewhere in American territory. Prominently suggested, as the biggest threat, among locations, is the Virgin Islands. But there are two good reasons, and many others, why this foreign manufacturer will not locate in the Virgin Islands. At present there is not sufficient water available, even for the existing manufacturers there. Furthermore the United States Government is already interested in the rum business in the Virgin Islands by reason of its financing the Virgin Islands Company, which are the largest producers of rum. It is scarcely likely, therefore, that the United States Government will welcome such competition to its own interests. So far as another attempt to locate in continental United States is concerned, it can be definitely stated that such an attempt will not be made by the foreign producer. It is a recognized fact that the type of rum which the American public prefers—such as that produced in Puerto Rico—cannot be duplicated in quality by manufacturers in continental United States. As proof of this statement, there are today several producers in the continental United States who are attempting to market a type of rum which they claim is similar to that manufactured by the foreign producer. Although this rum has been offered

for sale by large concerns for more than three years, in the United States market, they had but very small acceptance by the American public. Moreover, Americans associate rum with the West Indies and are not interested in any rum which is not manufactured in the West Indies. For the same reason it is impossible to get the American public to accept American-made Scotch Whiskey or American-made French Champagne, or various other substitutes for foreign beverages. Moreover, the foreign manufacturer realizes that a very favorable reputation is now being built for Puerto Rican rum, and this is, therefore, the main reason why he is interested in exploiting his own name to the disadvantage of Puerto Rico. We offer as proof of this statement the fact that, although prohibition has been repealed for more than three years, the foreign producer has not considered coming to Puerto Rico until very recently, since the name established by a local manufacturer has become well known in the United States by reason of the advertising which is being broadcast concerning the merit of rum produced in Puerto Rico.

Where the Monopoly Would Lie

It has been stated that local rum manufacturers are attempting to obtain a monopoly of the rum business in Puerto Rico because they are trying to prevent the foreign manufacturer from locating here. We wish to emphatically state that if the foreign producer were allowed to come to Puerto Rico, within a very short space of time he would enjoy, by far, the majority of the

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business available in the continental United States as well as in the Island of Puerto Rico because of his undeniable famous trade name. This would create the greatest absentee monopoly ever experienced on the Island of Puerto Rico and would mean the stifling of the present infant industry, which is attempting to compete with him on a price basis today. It can hardly be considered a monopoly when a group of local producers band together to fight a common enemy and to protect their investment,

which today amounts to more than \$2,000,000, invested in the future of this industry. We are only asking something which in justice is rightfully ours because we are entitled to the protection of the Puerto Rico Government against the encroachment of foreign capital and a famous name which was built up at a time it was unlawful for local interests to engage in this business. Tariff walls are erected by the United States Government to offer such protection as this. This is all that the local industry asks for, at least until such time as we are sufficiently strong to compete with foreign producers. If such protection is granted, it is safe to say that within a very short space of time, Puerto Rico will be known as the greatest producer of rum in the world and this reputation we should like to keep for Puerto Rico and Puerto Rican capital.

Those critics imputing monopolistic ideas clearly reveal their great innocence coupled with an abismal ignorance regarding the policy of every government today. While the instinct of self-preservation of all the peoples of the earth builds up high protective walls around every frontier, there are still some who call protection "monopoly" and "selfishness" is imputed to self preservation. The present administration of the United States did not change an iota of the tariff-law written by its predecessor. And this has been so despite the fact of the two different economic attitudes. The day in which the government of Puerto Rico should lack an economic mind, that day native capital, far from venturing into new activities, will remain lethargic because of lack of stimulation and aid. A prosperous rum industry will mean a greater income to the Treasury, a larger income to laborers and a general and greater well-being for all. In another chapter below we will show how other communities protect themselves from outside producers.

Historical Data

History tells us that Puerto Rico was the first island in the West Indies to produce rum. Rum was distilled here as early as 1575. Since then up to 1918 its production was one of our most important industries, and large quantities were exported to foreign countries. It was Puerto Rico distillers who taught that art in

Cuba, and large quantities were exported to that country up to the time of the Spanish-American war. From official sources we know that Spain, Cuba, Africa, the United States, England, France, Italy, and other countries, were purchasers of large quantities of Puerto Rican rum, a great part of which was used as a blend to improve the liquor of those countries.

This is proof of the fact that rum distillation was a very important industry in Puerto Rico during the 19th century and the beginning of the 20th, and is also indisputable proof of the fact that the rum industry is not a new one here, which is the reason

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why we say that Puerto Rico rum is willing to compete on an equitable basis with rum manufactured anywhere else in the world.

Both the Present and the Former Alcoholic Beverage Law are
Constitutional

We respectfully refer again to the provisions of laws Nos. 115 and 6 of 1936 above quoted at the beginning of this memorial. We wish to point out that both laws were approved by the two Chambers, by large majorities, last year. The idea that our industry deserved protection was unanimous. The votes against said laws (1) sprang from doubts as to the constitutionality of the same. If any discrepancies occurred among legislators, those were of a technical, constitutional nature. Generally, all showed themselves willing, as usual, to encourage the industries of the Island.

A narrative of the leading decisions handed down recently on the subject, will give a comprehensive idea of the juridical status of the problem. We shall proceed by citing decisions from lower courts up to the highest of all—the Supreme Court of the United States.

1.—In *Triner Corporation v. Arundel et al.*, 11 F. Supp. 145, decided June 29, 1935, the Minnesota Federal Court decided that the 21st Amendment did not except the states from complying with the commerce (2) and equal protection (3) clauses of the Constitution of the United States. Therefore, it held that a Min-

nessota statute which discriminated against liquor importers, was unconstitutional because it violated the clauses above referred to. We do not know whether this case was ever appealed to the Circuit Court.

2.—In *General Sales and Liquor Co. v. Becker*, 14 F. Supp. 348, decided by a Missouri Federal Court on February 10, 1936, it was held:

"In exercise of police power for protection of public morals, public health, and public safety, state may prohibit manufacture and sale of intoxicating liquor or may regulate and supervise manufacture and sale thereof *in such manner as it conceives to be necessary and proper*.

"Under constitutional amendment and federal statute prohibiting importation of intoxicating liquor into state in violation of law thereof, importation of intoxicating liquors in violation of state law is outside protection of commerce clause."

Up to now, we have these two contradictory decisions from lower courts.

3.—In *Riggins v. District Court of Salt Lake County*, 51 P. (2d) 645, the Supreme Court of Utah decided that:

"Provision of Twenty-First Amendment (4) prohibiting transportation or importation of intoxicating liquors into any state in violation of state law *was intended to enlarge rather than to restrict powers of states to control intoxicating liquors*.

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"Under Twenty-First Amendment, state can prohibit its inhabitants from importing intoxicating liquor for their own use.

"Liquor Control Act prohibiting sale of intoxicating liquors in Utah and providing that places where such liquors were illegally sold were common nuisances held not violative of Twenty-First Amendment."

4.—In *State v. Andre*, 54 P. (2d) 566, the Supreme Court of Montana decided on January 31, 1936, that:

"Statute prohibiting sale of intoxicating liquor by private individuals or corporations and providing for distribution thereof by state through system of stores held not unconstitutional interference with power of Congress to regulate interstate commerce, in view of Twenty-First Amendment."

5.—In *State v. Arluno*, 268 N. W. 179, the Supreme Court of Iowa decided on June 19, 1936, that:

"Iowa Liquor Control Act prohibiting manufacture and sale, keeping for sale, or transportation of liquor for any purpose except upon conditions set forth therein, held not violative of commerce clause. . . ."

6.—In *People v. Ryan*, 289 N. Y. S. 141, decided by the Supreme Court of New York on June 29, 1936, it was held:

"Under Twenty-First Amendment to United States Constitution, repealing Eighteenth Amendment, New York Legislature could forbid transportation or importation of intoxicating liquors into New York.

"Twenty-First Amendment to United States Constitution, repealing Eighteenth Amendment, held to permit Legislatures of the several states to regulate interstate commerce of intoxicants."

7.—In *Young's Market Co. et al. v. State Board of Equalization of California et al.*, 12 F. Supp. 140, decided by the Federal Court of California on September 21, 1935, it was held:

"The state statute drawing a distinction between wholesalers of beer manufactured in the State and those selling that which is imported in the State, is void because it violates the commerce and the equal protection clauses of the Constitution of the United States."

The statute to which this case refers imposes a license fee on

imported beer manufactured outside of California. Its object is evident: to protect a native industry from the competition of beers, not from Cuba or other foreign islands, but from other sister states of the Union. The importation fee was aimed at the great beer centers of St. Louis (Missouri) and Milwaukee (Wisconsin). The lower Federal Court, basing itself on the same grounds propounded by the Puerto Rican legislators who voted against laws Nos. 115 and 6 of 1936, held such statute was unconstitutional.

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8.—But the Supreme Court of the United States, in *State Board of Equalization of California v. Young's Market Co.*, recently decided—on November 9, 1936—reversed the decision referred to in the preceding subdivision. This decision, being a momentous one, is transcribed in its entirety in the Appendix.

All previous doubts were completely dispelled when the Supreme Court of the United States handed down this unanimous, transcendental decision on November 9, 1936. According to the Supreme Court, the 21st Amendment of the Constitution granted to the Legislatures of the States, Territories and possessions plenary powers as to liquor legislation. The constitutional clauses which used to act as iron limitations to such power, were torn asunder when the 21st Amendment was adopted. In liquor matters, our Legislature, in accordance with the Supreme Court of the United States, has the unlimited powers of an independent nation with full sovereignty to act.

It has the power to—

- (1) prohibit entirely the manufacture and sale of intoxicating liquors; or
- (2) prohibit the importation of a given kind of liquor; or
- (3) tax the importation of the same through license fees; or
- (4) establish a state monopoly of the liquor traffic; or
- (5) allow liquor sales only at certain stores; or
- (6) prohibit "all competing importations"; or
- (7) "channelize desired importations by confining them to a single consignee".

If our Legislature, as we have seen, can do the greater, it can do the lesser. If it has the power to do the whole, it has the power to do the part. If it can prohibit "competing importations"—not as against the foreigner only but also as against the other political entities of the Union—it has also the power to prohibit a foreign producer, who owns a famous brand, from locating in Puerto Rico (within the protecting tariff wall) to manufacture a Puerto Rican product but under the name made famous as of another country. The present American tariff-law was not meant to offer protection to foreign brands. If in the space of the two years in which our industry has been established, it did capture the American market, the factors for said capture being the quality of our product and the protection afforded by the tariff. How much more could not the native producer do should stability and protection be afforded him by law?

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Constitutional doubts being dispelled by the highest court, light has been shed in your way. We do not ask action through prejudices against other peoples: we ask of you to act through your instinct of preservation and patriotism, within the unlimited and untrammelled powers granted you by the 21st Amendment of the Constitution as construed by the decision of November 9, 1936.

A thorough perusal of the entire decisions above cited in part will give a complete history of how the States of the Union protect themselves not from the foreigner but from each other. Those honest differences of opinion which did spring up among our legislators, will disappear as soon as a thorough study of the decision appearing *in toto* on the appendix is made.

Before concluding we will say that the legislature of the State of Georgia recently approved a law prohibiting the sale of wines not made from products of that State. (See the December, 1936, number of "Mida's Criterion", p. 77).

We Demand Stability

The present beverage law suffers from a capital defect, in our opinion: the short term of its duration. It is a law perfectly

divisible in two parts: one part, which could be called administrative, and the other, revenue-raising. It causes no harm if this latter part should be effective only for a short period of one, two or three years; but the administrative part—that which lends structure to an industrial enterprise—ought to offer a greater degree of stability and permanence by being effective for an indefinite period of years, as all fundamental laws are. Banking credit, plans for greater expansion and aggressiveness for betterments do suffer from the natural timidity inherent to a business regulated by a law which is effective for one year only. It is well that the revenue-raising part should be effective for a short period; but not so the organic, fundamental part. This would not operate as an obstacle for the Legislature to amend the law from time to time and as necessity arises.

Conclusions

Your petitioners respectfully demand that:

- 1.—If any legislation on alcoholic beverages is to be approved, the provisions of law 115 above transcribed should be reenacted;
- 2.—If this should not be possible, then, the provisions of Law No. 6 above transcribed should not be altered or amended;
- 3.—These last provisions should be effective permanently.

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We respectfully submit the above facts to your consideration, and ask your cooperation to foster a native industry of Puerto Rico. By so doing you will aid in the welfare of Puerto Rico and stop certain foreign interests from exploiting the Island for their own personal gain.

Respectfully,

VICENTE TELLADO, SUCRS.

By Vicente Tellado.

BARCELO & CO., S. EN C.

J. R. NIEVES & CIA.

By Mig. Rovira.

RONRICO COPORATION

D. L. Hulsman, Secretary-
Treasurer

DESTILERIA TROPICAL

By Andres Barcelo.

VIGO ISERN & CIA.

By Jose Vigo.

DESTILERIA SERRALLES, INC.

By F. R. Hilera.

EDMUNDO B. FERNANDEZ

J. M. PORTELA & CO.

ROSES & CO., INC.

By F. Oliver, Vice president.

LICORERIA BORINQUEN

A. Yumet.

I. TORRUELLA & CO.

Jose Blay, Member of the
firm.

SUCRS. DE JOSE FERNANDEZ

R. VEGA E HIJOS, INC.

By Manuel Vega, Treasurer.

R. G. LAGO & Co.

PUERTO RICO DISTILLING CO.

By L. Oliver, Pres. & Gen. Mgr.

LICORERIA MARIN, INC.

Jose M. Marin, Vicepresident.

M. P. GRAU

JOSE GONZALEZ CLEMENTE &
Co.

THE GIOCONDA, INC.

LICORERIA "LA BODEGA",

Monllor & Boscio, Sucrs., S.
en C., pp. J. A. Comulada, Jr.

UBIDES & Co.

J. Ubides.

NICOLAS FIGUEROLA

EDUARDO R. GONZALEZ, INC.

By Gabriel de la Haba.

San Juan, Puerto Rico, February, 1937.

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(1) For the May 5, 1936, issue of "El Mundo", Hon. Rafael Martinez Nadal, President of the Senate, authorized the following statement regarding Law No. 115.

"Because at first-sight and without having had time to make a legal study of the same, I have very serious doubts regarding the constitutionality of several of its provisions. It establishes an unsurmountable barrier against the locating in the country of similar industries of universal reputation and prohibits the use of such a name on the package or label of the product. It is alleged in support thereof that any similar industry of recognized world reputation would injure Puerto Rican producers."

(2) Article 1, section 8.

"The Congress shall have Power To regulate Com-

merce with foreign Nations, and among the several States, and with the Indian Tribes. . . .

(3) Fourteenth Amendment, section 1:

"No State shall make or enforce any law which shall deny, to any person within its jurisdiction the equal protection of the laws."

(4) Amendment XXI.

Section 1.—The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2.—The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

APPENDIX

SUPREME COURT OF THE UNITED STATES .

No. 22—October Term, 1936.

State Board of Equalization of California, et al., appellants,

vs.

Young's Market Company, et al.,

Appeal from the District Court of the United States for the Southern District of California.

(November 9, 1936)

Mr. Justice Brandeis delivered the opinion of the Court.

This suit, brought in the federal court for southern California, challenges the validity, under the Twenty-first Amendment of the Federal Constitution of the provisions of a Statute of that State, and of the regulations thereunder, which impose a license-fee of \$500 for the privilege of importing beer to any place within its borders. The license does not confer the privilege of selling. Compare *Premier-Pabst Sales Co. v. Grosscup*, 298 U. S.—

The plaintiffs are domestic corporations and individual citizens of California who sue on behalf of themselves and of others simi-

larly situated. Each is engaged in selling at wholesale at one or more places of business within the State beer imported from Missouri or Wisconsin; and has a wholesaler's license which entitles the holder to sell there to licensed dealers beer lawfully possessed, whether it be imported or is of domestic make. For that license the fee is \$50. Each plaintiff has refused to apply for an importer's license, claiming that the requirement discriminates against wholesalers of imported beer; and that, hence, the statute violates both the commerce clause and the equal protection clause. The bill alleges that heavy penalties are exacted for importing, or having in possession, imported beer without having secured an importer's license; that unless enjoined defendants will enforce the statute; that enforcement would subject each of the plaintiffs to irreparable injury; and that the matter in controversy exceeds \$3000.

The several state officials charged with the duty of enforcing the statute, were joined as defendants, and made return to an order to show cause. They assert that the challenged statutory provisions and regulations are valid because of the Twenty-first Amendment, ratified December 5, 1933, which provides, by Section 2:

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

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First.—The main contention of the plaintiffs is that the exaction of the importer's license fee violates the commerce clause by discriminating against the wholesaler of imported beer. But there is no discrimination against them qua wholesalers. Everyone holding a wholesaler's license who is lawfully possessed of any beer, may sell it. The fee exacted for the privilege of selling, and the condition under which a sale may be made, are the same whether the beer to be sold is imported or domestic, or is both. The difference in position charged as a discrimination is not in the terms under which beer may be sold. It arises from the fact that no one

may import beer without securing a license therefor. What the plaintiffs complain of is the refusal to let them import beer without paying for the privilege of importation. Prior to the Twenty-first Amendment it would obviously have been unconstitutional to have imposed any fee for that privilege. The imposition would have been void, not because it resulted in discrimination, but because the fee would be a direct burden on interstate commerce; and the commerce clause confers the right to import merchandise free into any state, except as Congress may otherwise provide. The exaction of a fee for the privilege of importation would not, before the Twenty-first Amendment, have been permissible even if the State had exacted an equal fee for the privilege of transporting domestic beer from its place of manufacture to the wholesaler's place of business. Compare *Case of the State Freight Tax*, 15 Wall 232, 274, 277. Thus, the case does not present a question of discrimination prohibited by the commerce clause.

The amendment which "prohibited" the "transportation or importation" of intoxicating liquors into any state "in violation of the laws thereof", abrogated the right to import free, so far as concerns intoxicating liquors. The words used are apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes. The plaintiffs ask us to limit this broad command. They request us to construe the Amendment as saying, in effect: The State may prohibit the importation of intoxicating liquors provided it prohibits the manufacture and sale within its borders; but if it permits such manufacture and sale, it must let imported liquors compete with the domestic on equal terms. To say that, would involve not a construction of the Amendment, but a rewriting of it.

The plaintiffs argue that, despite the Amendment, a state may not regulate importations except for the purpose of protecting the public health, safety or morals; and that the importer's license fee was not imposed to that end. Surely the State may adopt a lesser degree of regulation than total prohibition. Can it be doubted that a state might establish a state monopoly of the

manufacture and sale of beer, and either prohibit all competing importations, or discourage importation by laying a heavy impost, or channelize desired importations by confining them to a single consignee? Compare *Slaughter House Cases*, 16 Wall. 36; *Vance v. W. A. Vandercook Co.*, (No. 1). 170 U. S. 438, 447. There is no basis for holding that it may prohibit, or so limit, importation only if it establishes monopoly of the liquor trade. It might permit the manufacture and sale of beer, while prohibiting absolutely hard liquors. If it may permit the domestic manufacture of beer and exclude all made without the State, may it not, instead

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of absolute exclusion, subject the foreign article to a heavy importation fee? Moreover, in the light of history, we cannot say that the exaction of a high license fee for importation may not, like the imposition of the high license fees exacted for the privilege of selling at retail, serve as an aid in policing the liquor traffic. Compare *Phillips v. City of Mobile*, 208 U. S. 472, 479.

The plaintiffs argue that limitation of the broad language of the Twenty-first Amendment is sanctioned by its history; and by the decisions of this Court on the Wilson Act, the Webb-Kenyon Act and the Reed Amendment. As we think the language of the Amendment is clear, we do not discuss these matters. The plaintiffs insist that to sustain the exaction of the importer's license-fee would involve a declaration that the Amendment has, in respect to liquor, freed the states from all restrictions upon the police power to be found in other provisions of the Constitution. The question for decision requires no such generalization.

Second.—The claim that the statutory provisions and the regulation are void under the equal protection clause may be briefly disposed of. A classification recognized by the Twenty-first Amendment cannot be deemed forbidden by the Fourteenth. Moreover, the classification in taxation made by California rests on conditions requiring difference in treatment. Beer sold within the State comes from two sources. The brewer of the domestic article may be required to pay a license-fee for the privilege of manufac-

turing it; and under the California statute is obliged to pay \$750 a year. Compare *Brown-Forman Co. v. Kentucky*, 217 U. S. 563. The brewer of the foreign article cannot be so taxed; only the importer can be reached. He is subjected to a license-fee of \$500. Compare *Kidd v. Alabama*, 188 U. S. 730, 732.

Reversed.

(Italics ours.)

JOURNAL ENTRY.

[Filed August 11, 1937.]

The hearing on the rule issued to Rafael Sancho Bonet, Treasurer of Puerto Rico to show cause why the petition of Bacardi Corporation of America for preliminary injunction should not be granted, resumed.

All interested parties are present and represented by their attorneys.

The court hears testimony in behalf of the defendant, the argument of counsel and further argument continued until Thursday, August 12, 1937, at 9:30 A.M.

Prior to argument after close of testimony, counsel for plaintiff moved to amend the complaint as follows, to wit:

That on the first line on page 3 of the complaint the date May 2, 1936, be amended to read "May 2, 1933". In second line on page 4, where it says "May 25, 1935" referring to the plaintiff it should read "November 23, 1935"; on line 12 of page 4, after the word "Amended" referring to the Federal permit, insert the words "on March 28, 1936". On page 18 just before the words "the plaintiff has no plan, complete and adequate remedy at law", to insert the allegation "that Section 44-B is also null and void because it is contrary to Section 34 of the Organic Act of Puerto Rico, as the subject matter of that section is not mentioned in the title of the Act."

No objections being made to the amendments proposed, the court allows same and the allegations as amended be considered as specifically denied by defendant in its answer.

JOURNAL ENTRY.

[January 17, 1938.]

This case is called for trial, all parties answer "ready". Plaintiff is represented by D. F. Kelley and Rafael O. Fernandez, Esquires; defendant appears by J. A. Gonzalez, Esq., Assistant Attorney General; Jaime Sifre, Esq., appears for intervenor Destileria Serralles, Inc., and Miguel Guerra, Esq., for intervenor P. R. Distilling Co.

Upon motion of D. F. Kelley, Esq., the name of Jerome L. Isaacs, Esq., is entered as an attorney in this court and also as one of the attorneys for complainant.

Attorney for plaintiff moves that certain amendments be made in the bill of complaint, which motion is granted, the amendments being the following:

On page 3, second line, instead of "May 2, 1936" it should read: "May 2, 1933".

On page 4, second line, change "May 25, 1935" to "November 23, 1935".

On page 4, line 12, insert after word "amended" the date "March 28, 1936".

On page 18, line 8, after "Fourth and Fifth Amendments to the Constitution of the United States" add "and the Commerce Clause thereof, Article 1, Section 8, Clause 3".

Attorney for plaintiff also moves to strike certain parts of paragraph 5 of answers of intervenors, which motion is not passed upon at this time.

Intervenor, Destileria Serralles, Inc., moves to amend its answer which motion is granted as follows:

On page 16, paragraph 17, line 5, after semicolon insert "or the Commerce Clause, Art. 1, Sec. 8, Clause 3 of the Constitution".

Thereupon, part of testimony in behalf of plaintiff heard and further trial continued to January 18, 1938.

MOTION TO DISMISS.

[Filed August 9, 1937.]

Now comes the defendant, the Treasurer of Puerto Rico, through his undersigned attorneys, and respectfully alleges as follows:

That the bill of complaint herein does not state facts sufficient to constitute a cause of action against the defendant.

Wherefore it is hereby respectfully prayed that the same be dismissed with such other further relief as the court may deem proper.

San Juan, Puerto Rico, August 9, 1937.

B. FERNANDEZ GARCIA,

Attorney General of Puerto Rico.

JESUS A. GONZALEZ,

Assistant Attorney General.

MANUEL CRUZ HORTA,

Special Legal Adviser, Treasury Department.

Served with copy this ninth day of August, 1937.

HARTZELL, KELLEY & HARTZELL,

by DANIEL F. KELLEY,

Attorney for Plaintiff.

ANSWER TO THE BILL OF COMPLAINT.

[Filed August 9, 1937.]

Now comes the defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, through his undersigned attorneys, and answering to the bill of complaint herein, respectfully alleges and prays as follows:

I. Defendant accepts the allegations contained in the first two unnumbered paragraphs of the bill of complaint, with the exception of that part thereof in which it is alleged that complainant is a Pennsylvania corporation and a citizen of that state, of which facts defendant lacks knowledge or information sufficient to admit

or otherwise contradict them, for which reason defendant denies them and demands strict proof thereof.

II. Defendant lacks knowledge or information sufficient to admit or otherwise contradict the allegations contained in paragraph (1), (2) and (3), of the bill of complaint, and therefore denies them and demands strict proof thereof, except that defendant admits that a certain rum under the name of "Bacardi" is sold in Cuba and elsewhere throughout the world, including the United States and Puerto Rico, and that the producers of such rum are considered by a part of the general buying public as possessing a good reputation as producing a rum of high quality which is sold under trade-marks and labels bearing the name of "Bacardi".

III. Defendant admits that the trade-marks mentioned in paragraph (4) of the bill of complaint were caused to be registered by the Cuban company in the United States Patent Office, but not having sufficient knowledge or information upon which to deny or admit the allegation that the said registrations are based upon corresponding Cuban registrations and are authorized by the Convention in effect between the United States and Cuba and by the Act of Congress approved February 20, 1905 (U. S. Stat. at Large 46, part II, p. 2907; U. S. C., Title XV, Section 8194), defendant denies it and demands strict proof thereof; also defendant

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admits that the said registrations are valid and Plaintiff's Exhibit Bacardi Registration attached to the bill represents a photostatic copy of the said trade-marks, but denies, for lack of sufficient knowledge or information to contradict or admit, the allegation to the effect that such registrations are still subsisting; also defendant admits that the following trade-marks:

No. 3916 — Bacardi;

No. 3917 — Bat trade-mark;

No. 3918 — Ron Bacardi, Superior Carta de Oro;

No. 3919 — Ron Bacardi, Superior Carta Blanca,

were registered in the office of the Executive Secretary of Puerto

Rico according to the laws of this Island on or about April 10, 1935.

IV. Answering the allegations contained in paragraph (5) of the bill of complaint, the defendant, for lack of information or belief to admit or otherwise contradict, denies the same and demands strict proof thereof.

V. Defendant lacks knowledge or belief sufficient to admit or otherwise contradict the allegations of plaintiff made under paragraph (6) of the bill of complaint, for which reason said allegations are hereby denied and strict proof thereof demanded.

Again, defendant admits that the label proposed to be used by plaintiff in Puerto Rico, as alleged in the bill of complaint, for its products, was approved by the Federal Alcohol Administration pursuant to the Federal Alcohol Administration Act of August 29, 1935, as exhibited by Plaintiff's Exhibit Approval of Label attached to the bill of complaint.

VI. Defendant admits that the Executive Secretary of Puerto Rico, on May 31, 1936, issued a certificate of registration as a foreign corporation in favor of plaintiff and that the Treasurer of Puerto Rico, on April 6, 1936, issued a license to the plaintiff to do business in Puerto Rico and that the said license has been renewed from year to year and is still in force, all fees under the laws of Puerto Rico in connection therewith having been paid by plaintiff. Defendant also admits that the Treasurer of Puerto

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Rico issued permits for distilling, rectifying and warehousing alcohol on July 20, 1936, in favor of the plaintiff.

However, the defendant is without knowledge or belief on which to admit or otherwise contradict, and therefore denies and demands strict proof thereof, the fact that on March 6, 1936, plaintiff entered into an agreement for the rental (with option of purchase) of a five-story building owned by the Puerto Rican American Tobacco Company situated on Marina Street, San Juan, for a period of three years, at a rental of \$9,600 a year, and that

plaintiff brought from Cuba and Pennsylvania the necessary equipment and materials for the development of its said alleged business. Defendant also denies, for lack of sufficient knowledge and information to admit or otherwise contradict, that plaintiff installed in the said building, in the city of San Juan, Puerto Rico, a rectifying plant at an expense of approximately 600,000 dollars, of which more or less 45,000 dollars was expended between April 6 and May 15, 1936. Defendant admits that the photographs attached to the bill of complaint, marked "Plaintiff's Exhibit Photographs of Plaintiff's Plant" represent the building at which plaintiff alleges to have installed its said business.

As regards plaintiff's allegation under paragraph (7) of the bill, to the effect that it has produced and accumulated in Puerto Rico a large stock of properly matured rum which it is now ready to bottle, label and sell, and is prepared to do so, and made commitments to its customers for sale to them of such products under the name of "Bacardi" and of the various trade-marks mentioned in the bill of complaint, and that plaintiff will be prevented from closing the said sales and delivering the said products to the purchasers on account of the reasons alleged in the bill of complaint solely, defendant denies such allegation and demands strict proof thereof for lack of sufficient knowledge and information to admit or otherwise contradict said allegation.

VII. Defendant admits all the allegations of fact contained in allegation (8) of the bill of complaint with regard to the approval of Act No. 115 of 1936 by the Legislature of Puerto Rico, but

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denies for lack of sufficient knowledge or information to believe or otherwise contradict, that plaintiff duly complied with the provisions of said Act, and also that plaintiff did not bottle any rum whatsoever, or use any label containing any brand, trade name, or trade-mark in contravention of said Law No. 115 of 1936, as alleged in paragraph (8) of the bill of complaint, and therefore defendant demands strict proof thereof.

VIII. Defendant admits the allegations made under paragraph (9) of the bill of complaint, with the exception that during the period since Act No. 6 took effect any stock of any high grade rum which plaintiff alleges was in process of maturing for marketing under the regular Bacardi rum labels, trade-marks and brands which plaintiff alleges is authorized by the Cuban company to use, and which are registered in the United States Patent Office as well as in the Office of the Executive Secretary of Puerto Rico, was in process of maturing for marketing under the name of "Bacardi" as set forth in the last paragraph of allegation (9) of the bill of complaint.

IX. Defendant admits allegation (10) of the bill of complaint.

X. Defendant denies that the Acts of the Legislature of Puerto Rico mentioned in paragraphs (8), (9) and (10) of the bill of complaint contain arbitrary, capricious and unreasonable restrictions, discriminations and prohibitions directed solely at the plaintiff, or directed against any other person, engaged in the liquor traffic in Puerto Rico. Defendant also denies that an attempt was made in Act No. 115 of the Legislature of Puerto Rico of the year 1937 for the purpose of preventing the plaintiff, and the plaintiff only, from using its regular registered trade-marks or labels in Puerto Rico.

Defendant further denies that in approving Act No. 6 of 1936, or any other act, the Legislature of Puerto Rico has exhibited any attempt whatsoever at specific sole discrimination, or any other kind of discrimination, against plaintiff or any other person, legal

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or natural, within the jurisdiction of the government of Puerto Rico in the exercise of its power to regulate and control the traffic within its territorial limits of alcoholic liquors within the provisions of the Twenty-first Amendment to the Constitution of the United States, or to prevent plaintiff from, in any way benefiting from the value and good will incident to the lawful use of its Bacardi name and trade-marks, or to do any lawful business within the Island of Puerto Rico.

With reference to the last paragraph of allegation (11) made by plaintiff on a certain Memorial which plaintiff alleges was addressed to the Legislature of Puerto Rico some time during the month of February, 1937, which defendant denies was received by the Legislature of Puerto Rico for lack of sufficient knowledge or information on which to accept or otherwise contradict, defendant now alleges that notwithstanding the feebleness and immateriality of the said allegation to the cause of action exercised by plaintiff in his bill of complaint, the Legislature of Puerto Rico, in approving the said Act No. 6 and Act No. 149, amendatory thereto, acted within the provisions of the Organic Act of Puerto Rico and the Twenty-first Amendment to the Constitution of the United States, and in no way contravenes any legislation of the Congress of the United States of America paramount to the legislative powers invested in the civil government of Puerto Rico established by the Organic Act approved on the second day of March, 1917, as amended.

To the contrary defendant alleges, upon information and belief, that the Memorial to which reference is made in the said paragraph of the bill of complaint reflects a partial view of the situation presented by plaintiff in his bill of complaint and that the influence of such Memorial on the final decision of the Legislature of Puerto Rico is very doubtful.

XI. Defendant denies that the regulations and limitations upon labels with regard to the contents shown in said labels, sizes of lettering thereon, and other details alleged in the bill of complaint, as provided for by Section 2 of the 1937 Law amending Section 40 of Act No. 6, approved June 30, 1936, and providing for regulations thereunder by the Treasurer of Puerto Rico, are

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inconsistent with similar regulations of the Federal Alcohol Administration Act and regulations thereunder; also defendant denies that the said provisions of the Federal Alcohol Administration Act, as amended, are paramount and mandatory in Puerto Rico, which fact defendant also considers as a conclusion of law.

Defendant further denies, for lack of sufficient knowledge or information to admit or otherwise contradict, that Section 2 of Act No. 6, approved June 30, 1936, purports to regulate or provide means of regulation of the labels of the plaintiff coming within Federal licenses granted to it by the Federal Government and within the approval of the Federal Alcohol Administration granted to plaintiff in connection with the labels referred to in the bill.

Defendant also denies, for the reason that it is a conclusion of law, the allegation in paragraph (12) (a) of the bill of complaint, which conclusion is not founded on the facts as presented by the bill. The fact that Section 2 of Act No. 139, manifestly discriminates against the plaintiff in that it requires the brand name to be three times the size of the name of the manufacturer, as well as the fact that the plaintiff's brand name "Bacardi" is the one which plaintiff is authorized to use in the United States and in Puerto Rico, is also denied for lack of sufficient knowledge or information to admit or otherwise contradict.

Defendant also denies that the purpose of Section 44 (b) of Act No. 6 of 1936, limiting the capacity of containers for exportation purposes to one gallon is to prevent plaintiff from exporting its products in bulk from Puerto Rico, or from using any labels or trade-marks which it may use on the products which it manufactures and bottles in this Island, or elsewhere. Defendant denies that this provision of law is unconstitutional and void for the reason that it contravenes the Federal Alcohol Administration Act and violates the Commerce Clause and the Fourteenth Amendment to the Constitution of the United States and the due process of law clause of the Organic Act of Puerto Rico. To the contrary defendant alleges that said Section 44 (b) of Law No. 6 of the

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year 1936, approved by the Legislature of Puerto Rico, is constitutional and valid, and represents a lawful exercise of the police power granted to the Legislature of Puerto Rico by the Organic Act, or at least, a lawful exercise of the general legislative powers

granted to the Legislature of Puerto Rico to control, regulate and license industrial and commercial enterprises in Puerto Rico on such lines as would protect, promote and stabilize the welfare and the financial good standing of this community, and the protection of the public in general.

Defendant further denies that the provisions of Section 5 of Act No. 149 of 1937, amending Section 97 of Act No. 6 of 1936, delegate the authority of the Treasurer of Puerto Rico as an administrative officer charged with the administration of the Revenue Laws of the Island (specially with the enforcement of the liquor laws involved in this case) on private persons, thus subjecting plaintiff to a multiplicity of suits.

Defendant also denies that the above-mentioned section of Act No. 6, as amended by Section 5 of Act No. 149, of 1937, or either of them, deprives the courts of discretion to protect litigants who come before them seeking justice. Again, defendant denies the contingency alleged by plaintiff in the said paragraph of the bill of complaint, that numerous and vexatious suits will be filed against plaintiff in connection with this controversy with the sole purpose of destroying plaintiff's business in Puerto Rico without complying with the requisites of posting bonds in amounts sufficient to secure the plaintiff against the damages which it may suffer from said suits.

Defendant further alleges that Section 3 of Act No. 149 of 1936, to which reference is made in paragraph (d) of allegation (12) of the bill of complaint, was enacted for the specific purpose of preventing plaintiff, or anyone else, from doing business in Puerto Rico, and to cure any defects or oversights in the acts assailed on the ground of unconstitutionality by plaintiff in this bill of complaint. Also defendant denies that under Section 3 of the said law plaintiff be denied of his rights under the trade-marks and good will alleged in the bill of complaint to an extent greater

than under the provisions of Section 44 of Act No. 6, which, plain-

tiff alleges, failed to take from it every remaining vestige of property rights.

Defendant specifically denies that the effect of Section 3 and Section 7 of said Act No. 149 cure any defect in the designation of the source of plaintiff's products, or the products of any other rum producer in Puerto Rico, and also that the provisions of Sections 3 and 7 of said Act No. 149 be applicable solely to plaintiff. Further, defendant denies, for lack of sufficient knowledge or information to accept or otherwise contradict, that subsequent to the approval of Section 3 of Act No. 149, aforementioned, a certain foreign entity, other than plaintiff, could not in fact qualify and continue in business under said section in Puerto Rico for the reasons alleged in the bill of complaint, and that this entity differ from the plaintiff in that its manufacture has been confined to Continental United States and its trade-mark has been used only in Continental United States prior to February 1, 1936, whereas plaintiff's trade-marks have been used in Continental United States and in the Republic of Cuba, and elsewhere, for which reason Sections 3 and 7 of Act No. 149, combined, are completely discriminatory against the plaintiff and applicable to no one else.

Defendant also denies that the said sections of the law deprive plaintiff of property without due process of law by preventing it from using its name and trade-marks, and benefit thereby, in Puerto Rico.

XII. For lack of sufficient knowledge or information to deny or otherwise contradict the allegations contained in paragraph (13) of the bill of complaint, defendant denies them, and expressly and specifically denies that Act No. 149, of 1937, deprives plaintiff of its right to use its alleged trade-marks or any other rights under the Convention referred to in the bill of complaint, or under the Act of Congress dated February 20, 1905; and defendant further denies that the Act of the Legislature of Puerto Rico

No. 149 of the year 1937 is contrary to the purpose of the Convention between the United States of America and the Republic

of Cuba signed on February 20, 1929, as alleged in the said paragraph of the bill of complaint, and that it frustrates the intent of the said Convention and might provoke retaliatory actions against American citizens by other countries signatories to that Convention.

XIII. Defendant lacks sufficient knowledge or information on which to deny or otherwise contradict the allegations of paragraph (14) of the bill, and, consequently, denies them and demands strict proof thereof.

XIV. Defendant admits that he is the Treasurer of Puerto Rico and is charged, in said capacity, with the execution of the Revenue Laws of Puerto Rico, including Act No. 149, and the Act which it purports to amend, but denies that the said Acts or any other act coming within his jurisdiction is void and unconstitutional; and also denies that the said acts themselves and the execution thereof, will irreparably damage plaintiff.

XV. Defendant is without knowledge or information sufficient to admit or deny the allegations of fact contained in paragraph (16) of the bill and, consequently, denies them and demands strict proof thereof.

XVI. Defendant specifically and expressly denies that Sections 2, 3, 4, 5 and 7 of Act No. 149, approved May 15, 1937, and such sections of Act No. 6 of 1936, as any of the aforesaid sections purports to amend, are unconstitutional and void for the reasons set forth under paragraph numbers 1, 2, 3 and 4 of the second paragraph of the said allegation (17) of the bill of complaint, and to the contrary defendant alleges that said provisions of law are constitutional and valid and constitute a lawful exercise of the powers granted by the Organic Act of Puerto Rico and the Twenty-first Amendment to the Constitution of the United States to the Legislature of Puerto Rico.

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Defendant further denies that Section 44 of Act No. 6 of 1936 is void because of the reason that the subject-matter of said section is not embraced in the title thereof, and to the contrary defendant

alleges that said section is valid and is comprehended in the title of the said Act No. 6 of 1936.

Defendant also denies that plaintiff has no plain, complete and adequate remedy at law, and to the contrary expressly and specifically alleges that plaintiff has an adequate, rapid and complete remedy at law provided for by the laws of Puerto Rico governing the payment of taxes under protest, proceedings for a declaratory judgment, and actions for damages in case of illegal action from governmental officials in the enforcement of an unconstitutional statute, all of which actions are amply protected under the laws of this jurisdiction.

SPECIAL DEFENSES.

1. For a first, further, separate and distinct defense, defendant alleges that plaintiff herein is estopped from challenging the validity of Act No. 6 of the Legislature of Puerto Rico, approved June 30, 1936, as amended, for the following reasons, to wit:

(a) It appears from paragraph (7) of the bill of complaint that plaintiff herein received from defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol.

(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted him thereunder and from the effects of the said Act insofar as it provided regulation and control of the liquor traffic by the Government of Puerto Rico up to the present time without even raising any objection to the legality or validity of the said Act.

2. For a second, further, separate and distinct defense in point of law arising from the face of the bill of complaint, defendant

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alleges that the Acts of the Legislature of Puerto Rico assailed by plaintiff in its bill of complaint are a valid exercise of the police power and of the general legislative powers granted to the Legislative Assembly of Puerto Rico by the Organic Act and

by the Twenty-first Amendment to the Constitution of the United States.

3. For a third, further, separate and distinct defense in point of law arising from the face of the bill of complaint, defendant alleges that the Acts of the Legislature of Puerto Rico assailed by plaintiff in its bill of complaint constitute necessary enactments for the control and regulation of the liquor traffic within the powers of the Legislative Assembly of Puerto Rico, and specially of the rum industry, and are not a burden on interstate commerce, nor do they constitute a denial of the equal protection of the laws.

4. For a fourth, further, separate and distinct defense in point of law arising from the face of the bill of complaint, defendant says that the facts alleged in said bill of complaint are insufficient to constitute a valid cause of action in equity.

Wherefore, it is hereby prayed that the plaintiff's bill may be dismissed with costs.

B. FERNANDEZ GARCIA,

Attorney General of Puerto Rico.

JESUS A. GONZALEZ,

Assistant Attorney General.

MANUEL CRUZ HORTA,

*Special Legal Adviser of the
Treasurer of Puerto Rico.*

Copy received, San Juan, P. R., August 9, 1937.

HARTZELL, KELLEY & HARTZELL,

by DANIEL F. KELLEY,

Attorneys for Plaintiff.

PETITION IN INTERVENTION.

[Filed August 9, 1937.]

*To the Honorable ROBERT A. COOPER, Judge of the District Court
of the United States for the District of Puerto Rico:*

Now comes petitioner, Destileria Serralles, Inc., and respectfully represents and shows as follows:

1. That the petitioner is a corporation organized under the laws of Puerto Rico, doing business in the Island, with its principal office in the municipal jurisdiction of Ponce, Puerto Rico, and is the owner therein of a distillery devoted to the manufacture of distilled spirits.

2. That the petitioner herein is the holder of permits to engage in the distillation, warehousing and rectifying of distilled spirits (rum) issued and granted by the Treasurer of Puerto Rico, and that petitioner having complied with all the regulations of the Federal Alcohol Administration, obtained from its permits to distill, rectify and warehouse and bottle distilled spirits (rum) in Puerto Rico, and is operating under said permits and manufacturing in the Island of Puerto Rico and selling in the Island and elsewhere, including Continental United States, a rum known as "Don Q".

3. That Bacardi Corporation of America filed a bill of complaint in equity praying that this court declare that certain sections of Act 149 approved by the Legislature of Puerto Rico on May 15, 1937, mentioned in the said bill of complaint, and each of them are unconstitutional and void, and also praying:

"That the defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, and all others having authority to enforce said Act and each of them and all persons acting in concert with them or by, through or under them and all holders of permits under Act No. 149 of May 15, 1937 and laws amended thereby, be enjoined, at first during the pendency of this suit and afterward perpetually from enforcing or attempting to enforce against this plaintiff the provisions of Sections 2, 3 and 4 and 5 (insofar as Section 4 adds sub-section (b) to Section 97 of Act No. 6), and Section 7 of Act No. 149, approved May 15, 1937, and such sections of Act No. 6 of 1936 as any of the aforesaid sections purport to amend."

4. That it is also prayed in the said bill of complaint, as follows:

"That the court issue an order directed to the defendant to show cause, if any he has, at such time as court may think

proper, why a preliminary injunction should not issue in this case."

5. Your petitioner further alleges that it is directly interested in the above entitled cause and that it would be affected by the decree sought by the complainant, as Bacardi Corporation of America, plaintiff, seeks to enjoin not only the defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, but also all permit holders under Act No. 149 of May 15, 1937 and laws amended thereby, and that the petitioner is one of said permit holders.

6. Petitioner alleges that the provisions contained in sub-section (b) of Section 97 of Act 6, approved on June 30, 1936, as amended by Section 5 of Act 149 of May 15, 1937, read as follows:

"(b) Any holder of a permit obtained under the provisions of this Act or of any other act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceedings as may be necessary, to demand protection against violation of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty Thousand (30,000) Dollars."

The above quoted provisions give to this petitioner as a permit holder, the right to appeal to court to demand protection against violations of the Act on the part of other persons, and such provisions are attacked by plaintiff in the bill of complaint filed in this cause, and the decree sought by plaintiff would deprive this petitioner and all other permit holders of the right granted to all permit holders by the said provisions of the Act.

7. Your petitioner further alleges that because of the reasons set forth above any temporary or final injunction would materially affect the interests of this petitioner, for which reason this petitioner is entitled to intervene and be heard.

8. That this petitioner, if permitted to intervene, is prepared to make its defense without delay to said complainant's cause and is prepared to and will, on the amount being fixed, pay or secure in all

things, as this Honorable Court may order, such costs as may accrue and be chargeable to its defense.

Wherefore your petitioner asks leave of the court to be permitted to intervene in this cause and to become a defendant in the same and to be permitted to defend in this cause by its solicitors as a party defendant, with full and complete rights of defense.

Respectfully submitted,

DESTILERIA SERRALLES, INC.,

by ANTONIO J. MATTA,
J. SIFRE, Jr.

San Juan, P. R., August 7, 1937.

UNITED STATES OF AMERICA.

DISTRICT OF PUERTO RICO,

CITY OF SAN JUAN, ss.

Felix Hilera being first duly sworn upon his oath deposes and says that he is the general manager of Destileria Serralles, Inc., petitioner in the foregoing petition in intervention; that he has read said petition and knows the contents thereof and that the same are true to the best of his knowledge, information and belief, and that this verification is made by deponent and not by the petitioner for the reason that the petitioner is a corporation and deponent is familiar with the allegations in the above petition.

F. HILERA.

Subscribed and sworn to before me by Felix Hilera, of age, married, resident of Ponce, Puerto Rico, to me personally known, this seventh day of August, 1937, at San Juan, P. R.

LULU G. DONOHUE, *Clerk.*

ORDER.

[Filed August 7, 1937.]

A motion for leave to intervene having been filed by Destileria Serralles, Inc., stating that it has an interest in the matter being litigated in this case and that it is a necessary and proper party to

a complete determination of the cause, which motion for leave to intervene is accompanied by a petition in intervention, and praying for an order that service of a copy of the said intervening petition upon the parties hereto may be made by delivering a copy to their solicitors, and for a rule directing the parties hereto to show cause on Monday, the ninth day of August, 1937, at nine A.M. or at any other time that this court may determine and decide why the said petitioner should not be allowed to intervene.

Now therefore, it is hereby ordered that service of a copy of the intervening petition upon the parties hereto may be made by delivering a copy to their solicitors, and further that the parties hereto show cause on Monday the ninth day of August, 1937, at 9:30 A.M., why the petitioner, Destileria Serralles, Inc. should not be allowed to intervene in this case and to become a defendant in the same.

San Juan, Puerto Rico, August 7, 1937.

ROBT. A. COOPER,

*Judge of the United States District Court
for the District of Puerto Rico.*

ANSWER OF DESTILERIA SERRALLES, INC., INTERVENER.

[Filed August 9, 1937.]

Now comes Destileria Serralles, Inc., hereinafter referred to as "the intervener", and by leave of court files its intervention in the above entitled cause, and for its separate answer to plaintiff's bill of complaint alleges and states as follows:

1. Intervenor is a corporation duly organized under and by virtue of the laws of Puerto Rico, and is a citizen thereof.
2. Plaintiff, Bacardi Corporation of America, purports to be a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania.
3. Defendant, Rafael Sancho Bonet, is and was at all times hereinafter mentioned in the bill of complaint and herein, the Treasurer of Puerto Rico, a citizen of the United States of America,

and charged under the laws of the Island of Puerto Rico with the duty, among others, of administering the Alcoholic Beverage Laws of Puerto Rico.

4. Intervenor has an interest in the matter being litigated in this case and would be injured and damaged by the unenforcement of the sections of the Alcoholic Beverage Laws of the Island attacked and assailed by plaintiff.

5. Intervenor is the holder of permits to engage in the distillation, warehousing and rectifying of distilled spirits (rum) issued and granted by the Treasurer of Puerto Rico, and having complied with all the regulations of the Federal Alcohol Administration, intervenor obtained from it permits to distill, rectify and warehouse and bottle distilled spirits in Puerto Rico, and is operating under said permits and manufacturing in the Island of Puerto Rico and selling in the Island and elsewhere, including Continental United States, a rum known as "Don Q".

6. Intervenor is and has been the owner of a distillery and of a plant for rectifying rum situated in the municipal jurisdiction of Ponce, in the Island of Puerto Rico, and that in the said plant and in the said distillery intervenor herein has invested large and substantial sums of money.

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FIRST. Intervenor is without knowledge as to the allegations contained in paragraph 1 of the bill of complaint, except that intervenor admits that Compania Ron Bacardi, S. A., a Cuban corporation, conducts the business of the production of alcoholic liquors, particularly rum sold under registered trade-marks including the word Bacardi and Bacardi y Cia, the representation of a bat in a circular frame, and certain distinctive labels. Intervenor further alleges that the said rum has been sold and is sold in Puerto Rico.

SECOND. Intervenor is without knowledge as to the allegations contained in paragraph 2 of the bill of complaint and therefore demands strict proof thereof, except that it admits that rum Bacardi was sold in the United States before national prohibition and also in Puerto Rico, and except that it admits that during

national prohibition rum under the name "Bacardi" was continued to be produced and sold in Cuba and elsewhere, and that after the repeal of prohibition sales of Bacardi were made in the United States and in Puerto Rico and have since continued.

THIRD. Intervenor is without knowledge as to the allegations contained in paragraph 3 of the bill of complaint to the effect that Bacardi rum is and always has been made according to definite processes and methods and therefore demands strict proof thereof. It admits that the Cuban producers of the rum known in the market as "Bacardi" possess property rights in the said name and in such trade-marks and distinctive labels which may be owned by the Cuban producers of the said rum Bacardi.

FOURTH. Intervenor is without knowledge as to the allegations made in paragraph 4 of the bill of complaint and therefore demands strict proof thereof, except that intervenor admits that the Cuban company caused the trade-marks mentioned in the said paragraph of the bill of complaint to be registered in the United States Patent Office, and that said trade-marks of the Cuban Company are subsisting, and except that it admits that the trade-marks alleged in the said paragraph to have been registered in the Executive Secretary's office of Puerto Rico were so registered.

FIFTH. As to paragraph 5 of the bill of complaint, intervenor is without knowledge and therefore demands strict proof thereof. And intervenor further alleges and avers, upon information and belief, that plaintiff cannot devote itself in the State of Pennsyl-

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vania, to the pursuits or objects or to any of the pursuits or objects, mentioned and enumerated in the said paragraph of the bill of complaint.

SIXTH. As to the matters alleged in paragraph 6 of the bill of complaint, intervenor is without knowledge and therefore demands strict proof thereof, except that intervenor admits that a photostatic copy is attached to the bill of complaint, which photostatic copy among other things, shows that the label therein mentioned has been approved.

SEVENTH. As to the matters alleged in paragraph 7 of the bill

of complaint, intervenor is without knowledge and therefore demands strict proof thereof, except that it admits that plaintiff was licensed to do business in Puerto Rico and that it received from the Executive Secretary of Puerto Rico a certificate of registration as a foreign corporation in Puerto Rico, and that plaintiff also received permits from the Treasurer of Puerto Rico in July, 1936, for distilling, rectifying and warehousing alcohol.

Further answering the allegations contained in said paragraph 7 of the bill of complaint this intervenor alleges that the permits obtained by plaintiff from the Treasurer of Puerto Rico for distilling, rectifying and warehousing alcohol were issued by the Treasurer at the request of the plaintiff, and that plaintiff has enjoyed the benefits of said permits.

EIGHTH. Answering the allegations contained in paragraph 8 of the bill of complaint this intervenor admits all of the allegations thereof except that it is without knowledge as to the allegations contained in the last paragraph of said paragraph 8 and therefore demands strict proof thereof.

NINTH. Answering the allegations contained in paragraph 9 of the bill of complaint intervenor admits each and every allegation thereof except that it is without knowledge as to the allegations contained in the last two paragraphs of said paragraph 9 of the bill of complaint and therefore demands strict proof as to each and all of the allegations contained in the said paragraph.

TENTH. Intervenor admits all of the allegations contained in paragraph 10 of the bill of complaint.

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ELEVENTH. Answering the allegations contained in paragraph 11 of the bill of complaint—marked 12 therein by mistake—intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of said paragraphs of the bill of complaint, contain arbitrary restrictions; intervenor denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of the said paragraphs of the bill of complaint, contain capricious restrictions; intervenor denies that the acts or any of the acts of the

Legislature of Puerto Rico cited in paragraphs 8, 9 and 10, or in any of said paragraphs of the bill of complaint, contain unreasonable restrictions; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of said paragraphs of the bill of complaint, contain arbitrary discriminations; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of the said paragraphs of the bill of complaint, contain capricious discriminations; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10, or in any of said paragraphs of the bill of complaint, contain unreasonable discriminations; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of the said paragraphs of the bill of complaint, contain arbitrary prohibitions; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of the said paragraphs of the bill of complaint, contain capricious prohibitions; intervener denies that the acts or any of the acts of the Legislature of Puerto Rico cited in paragraphs 8, 9 and 10 or in any of said paragraphs of the bill of complaint, contain unreasonable prohibitions; intervener denies that the provisions or any of the provisions of the acts of the Legislature of Puerto Rico, or any other acts of the Legislature of Puerto Rico, cited and mentioned in the bill of complaint were directed at the plaintiff or at any other person or corporation in particular, but on the contrary alleges that each and all of the said acts were approved without

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any intention or desire to affect or damage plaintiff or anybody else in particular and that they were approved as legislative measures considered by the Legislature of Puerto Rico to be of public interest; intervener denies that in Act 115, or in any other act mentioned in the bill of complaint an attempt was made to prevent plaintiff and the plaintiff only, from using any trade-marks which plaintiff could lawfully and legally use and alleges that the provisions of Act 115 were intended to be applicable to all coming

within its provisions; intervener denies that a specific or sole discrimination was attempted in Section 44 of Act No. 6; intervener denies that Act No. 149 attempted to cure every or any omissions in previous legislation which failed to discriminate effectively or otherwise against plaintiff, and further alleges that no discrimination was attempted against plaintiff by the previous or any previous legislation; intervener denies that the Legislature by Act 149, or by any other act, provided or has ever provided a complete prohibition or any other prohibition as against the plaintiff only as to the use of trade-marks or otherwise, but on the contrary alleges that all prohibitions contained in the legislation referred to in the bill of complaint or in any of the said legislation, were and are intended to apply equally to all of those coming within such prohibitions; intervener denies that the Legislature by Act 149, or by any of the provisions thereof, or by any other act, attempted or attempts to prevent plaintiff from benefiting from any rights or property or use which it may lawfully own and which it may lawfully use in this Island, and intervener alleges that under the provisions of the laws in question, which are valid laws, not only plaintiff but anyone coming within the prohibitions contained in said legislation, are subject to such prohibitions and restrictions, which were approved by the Legislature of Puerto Rico for the purpose of protecting the public interest, motivated by legitimate reasons and as prohibitions and restrictions which the Legislature of Puerto Rico has a right to impose by law.

Intervener admits that the Memorial mentioned in paragraph 11 of the bill of complaint was addressed to the Legislature of Puerto Rico by several persons and entities as representing the "Puerto Rican Rum Producers" and a copy of said Memorial is the one attached to the bill of complaint, intervener, however, denies

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that the said Memorial shows what plaintiff pretends, but on the contrary alleges that the said Memorial only shows and was directed to show the power of the Puerto Rican Legislature to protect the local industry and to legislate in connection with the matters and things referred to in the said Memorial.

TWELFTH. Answering the allegations of sub-paragraph (a) of paragraph 12 of the bill of complaint this intervener denies upon information and belief that the provisions of Section 2 of Act 149, or any part of the said provisions, are in conflict with provisions, or any of the provisions of the Federal Alcohol Administration Act or regulations or of any of the regulations thereunder; as to the allegation that the Federal Alcohol Administration Act, as amended, is paramount or mandatory in this Island, such allegation is a conclusion of law and for that reason intervener makes no answer thereto, but intervener alleges that whether or not the said Act is paramount or mandatory in Puerto Rico is immaterial as the provisions of Section 2 of Act of 1937 amending Section 40 of Act 6 approved June 30, 1936, are not in conflict with any federal legislation as this intervener is informed and believes.

Further answering the allegations contained in said sub-paragraph (a) of paragraph 12 of the bill of complaint, this intervener alleges that Section 2 of the Act of 1937 amending Section 40 of Act No. 6 of June 30, 1936, regulates matters in connection with labeling which are within the powers and jurisdiction of the local government in dealing with the manufacture of rum in Puerto Rico; as to the allegations to the effect that no label used in Puerto Rico by plaintiff or by anyone can in any respect depart from the regulations of the Federal Alcohol Administration Act, this intervener refuses to answer the same as it is a conclusion of the pleader, but intervener further alleges, upon information and belief, that in complying with the local legislation as to labeling there is no necessity of departing from the regulations or any of the regulations of the Federal Alcohol Administration Act.

This intervener denies upon information and belief that said Section 2 of Act 149, or any of the provisions thereof, discriminates against plaintiff in any way or manner.

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Intervener is without knowledge as to whether or not plaintiff has a right to use the name "Bacardi" or any of the Bacardi trademarks and therefore demands strict proof thereof.

Intervener denies that the purpose of paragraph (b), Section 4 of

Act 149 is to prevent plaintiff from exporting its product, or any of its products in bulk from Puerto Rico and this intervener denies that the purpose of the provisions or any of the provisions of said paragraph (b) is to prevent plaintiff from using labels or trademarks which it may have a right to use, but on the contrary alleges that the purpose of the provisions of said paragraph and of all of the provisions thereof, is to protect the revenues of the Insular Government and to protect the consuming public from fraud and deceit and that the said provisions and all of the said provisions are directed equally to all those coming under the purview thereof.

Further answering the allegations contained in sub-paragraph (a) of paragraph 12 of the bill of complaint, this intervener denies that the provisions or any of the provisions of paragraph (b) of Section 4 of Act 149 are illegal; intervener denies that the provisions, or any of the provisions of paragraph (b) of Section 4 of Act 149 are unconstitutional; intervener denies that the provisions or any of the provisions of paragraph (b) of Section 4 of Act 149 are void; intervener denies, upon information and belief that the said provisions or any of them contravene the Federal Alcohol Administration Act; intervener denies that the said provisions or any of them violate the commerce clause; intervener denies that the provisions or any of the provisions of the said paragraph (b) of Section 4 of Act 149 violate the Fourteenth Amendment to the Constitution of the United States; intervener denies that the provisions or any of the provisions of said paragraph (b) of Section 4 of Act 149 violate the due process clause of the Organic Act of Puerto Rico.

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Intervener, as to sub-paragraph (c) of paragraph 12 of the bill of complaint admits that Section 5 of Act 149 amends Section 97 of Act No. 6 approved June 30, 1936 by providing in sub-section (a) in substance a duplication of Section 97 of Act No. 6 and adding thereto sub-section (b), whereby any holder of a permit may appeal to a court of competent jurisdiction through such ordinary and extraordinary proceedings as may be necessary to demand protection against violations of said Act on the part of

other persons upon the giving of a bond in an amount of not less than \$5,000 nor more than \$30,000; as to the allegation made in the bill of complaint that this sub-section permits the enforcement of the Act at the instance of a private person or a common informer, intervener alleges that the provision of the law attacked by plaintiff gives the right to demand protection against violations of this Act not to all persons but to permit holders; intervener denies that the said provisions permit the enforcement of the Act in accordance with the person's private conception of the purport of the Act; intervener denies that the said provisions permit the enforcement of the Act even when the person seeking protection for violations of the Act may have sustained no legal damages whatsoever, but on the contrary alleges that permit holders would be damaged by violations of the Act on the part of other persons; intervener denies that only permit holders could have the right or have the right to an action for the enforcement of the Act; intervener denies that the provisions assailed by plaintiff may be construed as a delegation of authority; intervener denies that the said provisions or any of them limit effectually or otherwise the designated administrative officers or any other officers whose function it is to interpret or enforce the said Act; intervener denies that the said provisions or any of them eliminate the Treasurer of Puerto Rico from such proceedings, and further alleges that the said

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provisions of the law do not affect the powers or any of the powers of the Treasurer of Puerto Rico or of any other officer of the Government of Puerto Rico in connection with the enforcement of the Act; intervener denies, upon information and belief that the additional provision for bond limited as to minimum and maximum amount is an attempt, illegal or otherwise to deprive the courts of the discretion to protect litigants; intervener is without knowledge as to what number of permit holders would demand protection against the violations of this Act and therefore denies the allegation made in the bill of complaint that plaintiff would be subjected to a multiplicity of suits.

Further answering the allegations made in sub-paragraph (c) of

paragraph 12 of the bill of complaint intervenor is without knowledge as to the allegations made in the last sentence of sub-paragraph (c) except that intervenor alleges that any suit filed by this intervenor, if intervenor should decide to file such a suit, would not be filed for the purpose of destroying the business or any of the business of the plaintiff in Puerto Rico, but for the sole purpose of protecting itself as a permit holder against violations of the Act; and in such case this intervenor would be ready and willing to post bond in sufficient amount to answer for any damages should such suit be decided and determined adversely to this intervenor.

Answering the allegations contained in sub-paragraph (d) of paragraph 12 of the bill of complaint intervenor denies that Section 3 of Act 149 amending Section 44 of Act No. 6 was enacted to prevent plaintiff from conducting its business in Puerto Rico, but on the contrary alleges that said Section 3 was enacted for the purpose of establishing restrictions and prohibitions which the Legislature of Puerto Rico deemed necessary and advisable, and to be applied equally to all parties and persons coming within its provisions; intervenor, as to the allegations made in said sub-paragraph (d) in plaintiff's bill to the effect that Section 3 was enacted

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to cure what the plaintiff believes was an oversight in the acts referred to in the bill of complaint, such allegation is immaterial to this cause and besides is a conclusion of the plaintiff and for that reason this intervenor makes no answer thereto; intervenor is without knowledge as to whether or not plaintiff is entitled to the use of any Bacardi trade-marks and therefore demands strict proof thereof; intervenor denies upon information and belief that the previous acts, or any acts of the Legislature of Puerto Rico has taken or takes from the plaintiff any property rights; intervenor denies that Section 3 and Section 7 of Act 149 or any one of them are applicable to plaintiff only but on the contrary alleges that they are equally applicable to all others coming under the provisions thereof. Further answering the allegations contained in said sub-paragraph (d) of paragraph 12 of the bill of complaint

intervener says that it is without knowledge as to the allegation made in the bill of complaint to the effect that plaintiff has the right to use the trade-marks mentioned in the bill of complaint and therefore demands strict proof thereof. And interverner denies that the provisions of the law or any of the provisions of the law mentioned in the bill of complaint are applicable to plaintiff only or discriminatory against plaintiff only but on the contrary alleges that such provisions are equally applicable to all coming under the purview thereof; interverner denies that Sections 3 and 7 combined or separately permit all other entities except the plaintiff to operate without restriction, and in this connection interverner alleges that the provisions of the said sections apply to whoever may come under the provisions of said sections. Intervener denies that the said provisions or any of them deprive plaintiff of the equal protection of the law guaranteed by the Constitution of the United States; interverner denies that the said provisions or any

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of them deprive plaintiff of the equal protection of the law guaranteed by the Organic Act of Puerto Rico; interverner denies that said provisions or any of them deprive plaintiff of its property or any of its property without due process for the reasons, or for any other reasons, stated in the bill of complaint.

THIRTEENTH. Answering the allegations contained in paragraph 13 of the bill of complaint interverner denies that Act 149, or any of its provisions, prohibits plaintiff from using trade-marks which it may be entitled to use except that interverner admits that Section 44 of Act No. 6 approved June 30, 1936, as amended by Section 3 of Act 149 of May 15, 1937, prohibits among other things any holder of a permit to distill, rectify, manufacture, bottle or can any distilled spirits, rectified spirits or alcoholic beverages on which there appears, whether on the containers, labels, stoppers or elsewhere any trade-mark, if said trade-mark has been used previously in whole or in part, directly or indirectly, or in any other manner anywhere outside of the Island of Puerto Rico.

Intervener is without knowledge as to the plaintiff's right to the use of the Cuban trade-marks or any of said trade-marks, and

therefore, for lack of such knowledge denies that plaintiff is deprived of any rights under the Convention between the United States and Cuba, or under the Act of Congress of February 20, 1905; intervener denies that Act No. 149 is contrary to the purposes of the Convention between the United States and Cuba and also denies that said Act 149 frustrates the intent of said Convention. The intervener further alleges, answering the allegation made by plaintiff in said paragraph 13 of the bill of complaint to the effect that Act No. 149 might provoke retaliatory action against American citizens by other countries signatories to that Convention, that said allegation is immaterial and an opinion of the plaintiff, and for such reason intervener makes no answer thereto.

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FOURTEENTH. Answering the allegations contained in paragraph 14 of the bill of complaint this intervener admits that the amount in controversy exceeds exclusive of interests and costs, the sum of three thousand dollars; intervener denies that the said Act No. 149 or any of the provisions thereof involve the destruction of the plaintiff's name; intervener reiterates that it is without knowledge as to whether plaintiff has the right to Bacardi trade-marks, or to any of them, and therefore demands strict proof thereof; intervener is without knowledge as to the value of Bacardi's trade-marks; intervener is without knowledge as to whether plaintiff has lawfully acquired Bacardi's trade-marks, or any of them and therefore demands strict proof thereof; if the word "value" and the word "right" inserted in the first line of paragraph 14 of the bill of complaint are mentioned by plaintiff in connection with alleged rights of the plaintiff to Bacardi trade-marks or to any of the Bacardi trade-marks; intervener is without knowledge as to the right of the plaintiff to said trade-marks or any of them, or as to the value of the said trade-marks or any of them.

FIFTEENTH. Intervener, answering the allegations contained in paragraph 15 of the bill of complaint denies that Act 149 or any of the provisions thereof is unconstitutional; intervener, fur-

ther answering the allegations contained in paragraph 15 of the bill of complaint denies that Act 149 or any of the provisions thereof is void; intervener denies that the Act amended by said Act 149 or any of the provisions of said amended Act is unconstitutional; intervener denies that the Act amended by said Act 149 or any of its provisions is void.

As to the allegations made by plaintiff in said paragraph 15 of the bill of complaint that the Acts themselves and the execution thereof will irreparably damage said plaintiff, this intervener is without knowledge and therefore demands strict proof thereof.

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SIXTEENTH. Answering the allegations contained in paragraph 16 of the bill of complaint this intervener admits that the plaintiff will be prevented from shipping in containers of over one-gallon capacity to the United States, rum produced in Puerto Rico; intervener denies that the provisions limiting the size of the containers are unreasonable; intervener denies that the provisions limiting the size of the containers are arbitrary; intervener denies that the provisions limiting the size of the containers are illegal; intervener denies that the provisions limiting the size of the containers are unconstitutional; this intervener is without knowledge as to the other allegations set forth in paragraph 16 of the bill of complaint and therefore demands strict proof thereof.

SEVENTEENTH. Answering the allegations contained in paragraph 17 of the bill of complaint this intervener denies that Sections 2, 3, 4 and 5 of Act 149, or any of them, are contrary to or violate the Fifth and Fourteenth Amendments to the Constitution of the United States or either of the said amendments; or the Commerce Clause, Article 1, Section 8, Clause 3 of the Constitution; intervener denies that Sections 2, 3, 4 and 5 of Act 149, or any of them are contrary to or violate Sections 2 or 9, or either of them, of the Organic Act of Puerto Rico; intervener denies, upon information and belief, that Sections 2, 3, 4 and 5 of Act 149, or any of them are contrary to or violate the Federal Alcohol Administration Act or any of its provisions or amendments; intervener denies that Sections 2, 3, 4 and 5 of Act 149, or any of them,

are contrary to or violate the Convention between the United States and Cuba; intervener denies that Section 7 of Act 149 is contrary to or violates the Fifth and Fourteenth Amendments to the Constitution of the United States or either of said Amendments; intervener denies that said Section 7 is contrary to or violates Sections 2 and 9 or either of the said sections, of the Organic Act of Puerto Rico; intervener denies, upon information and belief, that said Section 7 is contrary to or violates the Federal Alcohol Administration Act, or any of its amendments; intervener denies that said Section 7 is contrary to or violates the Convention between the United States and Cuba; intervener denies that such sections of Act No. 6 of 1936, or any of the sections of said Act, as were amended by Act 149, are contrary to or violate the Fifth and Fourteenth Amendments to the Constitution of the United States, or either of said amendments; intervener denies that such sections of Act No. 6 of 1936, or any of the sections of said Act, as were amended by Act 149, are contrary to or violate the second and ninth sections of the Organic Act of Puerto Rico, or either of said sections; intervener denies, upon information and

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belief, that such sections of Act No. 6, or any of the sections of said Act, as were amended by Act 149, are contrary to or violate the Federal Alcohol Administration Act or any of its provisions or amendments thereto; intervener denies that such sections of Act No. 6 of 1936, or any of the sections of said Act, as were amended by Act 149, are contrary to or violate the Convention between the United States and Cuba; intervener denies that Section 44 of Act No. 6 is void or of no effect for the reasons set forth in the bill of complaint or for any other reasons and alleges that the subject matter of the said section is within the title of the said Act.

Intervener further alleges and avers, answering the allegations contained in said paragraph 17 of the bill of complaint, that the sections and acts mentioned therein are constitutional and legislation within the powers of the Legislature of Puerto Rico; this intervener refuses to answer the allegation contained in paragraph 17

of the bill of complaint that plaintiff has no plain, complete and adequate remedy at law as said allegation is a conclusion of law.

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SPECIAL AND SEPARATE DEFENSES.

1. For a first, further, separate and distinct defense, intervener alleges that plaintiff herein is estopped and barred from challenging or questioning the validity of Act No. 6 of the Legislature of Puerto Rico approved June 30, 1936, as amended, to wit:

(a) It appears from paragraph 7 of the bill of complaint that plaintiff herein received from the defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol, and intervener alleges, upon information and belief, that the said permits contain a paragraph which translated from the Spanish language, reads as follows:

"This permit is conditioned upon compliance with the provisions of the 'Alcoholic Beverages Act' of Puerto Rico and with all regulations applicable in accordance with the laws now in force or which may be in force hereafter, and Federal laws and regulations applicable, and shall remain in force from the date of its issuance and until it may be suspended, revoked, annulled, surrendered voluntarily or terminated by virtue of the provisions of the laws or regulations."

(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted it thereunder and intervener is informed and believes that plaintiff has operated under said permits.

2. For a second, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener alleges that the Acts of the Legislature of Puerto Rico assailed by plaintiff in its bill of complaint are valid exercise of the police power and of the general legislative powers granted to the Legislative Assembly of Puerto Rico by the Organic Act and by the Twenty-first Amendment of the Constitution of the United States.

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3. For a third, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener alleges that the Acts of the Legislature of Puerto Rico assailed by plaintiff in its bill of complaint constitute necessary enactments for the control and regulation of the liquor traffic within the powers of the Legislative Assembly of Puerto Rico, and especially of the rum industry, and are not a burden on interstate commerce, nor do they constitute a denial of the equal protection of the laws.

4. For a fourth, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener alleges that plaintiff herein is barred by his laches to assail the validity of the statutes aforesaid.

5. For a fifth, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener says that the facts alleged in said bill of complaint are insufficient to constitute a valid cause of action in equity.

Wherefore, intervener prays that the plaintiff's bill may be dismissed with costs.

San Juan, Puerto Rico, August 9, 1937.

ANTONIO J. MATTA,
J. SIFRE, JR.,

Attorneys for Intervener,
DESTILERIA SERRALLES, INC.

UNITED STATES OF AMERICA.

DISTRICT OF PUERTO RICO,
CITY OF SAN JUAN, SS.

Felix Hilera, being first duly sworn on his oath deposes and says that he is the general manager of Destileria Serralles, Inc., a corporation organized under the laws of the Island of Puerto Rico with its principal office in the municipal jurisdiction of Ponce, Puerto Rico, intervener herein; that he is familiar with the contents of the above answer and that the matters and things therein contained are true to the best of his knowledge, information and belief, and as to the allegations made on information and belief

deponent believes them to be true; that the reason this verification is made by deponent is that deponent is the person most familiar with the business and affairs of Destileria Serralles, Inc. and with the matters and things alleged in the above answer.

FELIX HILERA.

Subscribed and sworn to before me this ninth day of August, 1937, by Felix Hilera, of age, married, resident of Ponce, Puerto Rico, to me personally known, at San Juan, Puerto Rico.

LULU G. DONOHUE, *Clerk*.

JOURNAL ENTRIES.

January 17, 1938.

This case is called for trial, all parties answer "ready". Plaintiff is represented by D. F. Kelley and Rafael O. Fernandez, Esquires; defendant appears by J. A. Gonzalez, Esq., Assistant Attorney General; Jaime Sifre, Esq., appears for intervenor Destileria Serralles, Inc., and Miguel Guerra, Esq., for intervenor P. R. Distilling Co.

Upon motion of D. F. Kelley, Esq., the name of Jerome L. Isaacs, Esq., is entered as an attorney in this court and also as one of the attorneys for complainant.

Attorney for plaintiff moves that certain amendments be made in the bill of complaint, which motion is granted, the amendments being the following:

On page 3, second line, instead of May 2, 1936 it should read: "May 2, 1933".

On page 4, second line, change May 25, 1935 to "November 23, 1935".

On page 4, line 12, insert after word "amended" the date "March 28, 1936".

On page 18, line 8, after "Fourth and Fifth Amendments to the Constitution of the United States" add "and the Commerce Clause thereof, Article 1, Section 8, Clause 3".

Attorney for plaintiff also moves to strike certain parts of paragraph 5 of answers of intervenors, which motion is not passed upon at this time.

Intervenor, Destileria Serralles, Inc., moves to amend its answer which motion is granted as follows:

On page 16, paragraph 17, line 5, after semicolon insert "or the Commerce Clause, Art. 1, Sec. 8, Clause 3 of the Constitution".

Thereupon, part of testimony in behalf of plaintiff heard and further trial continued to January 18, 1938.

January 18, 1938.

The trial of the above case resumed, all parties being present as of yesterday.

Thereupon, further testimony of witnesses in behalf of complainant heard, and it being the adjournment hour, the further trial of the case is continued until Wednesday, January 19, 1938, at 9:30 A.M.

January 19, 1938.

The trial of the above case is resumed, all parties being present as of yesterday.

The remainder of testimony in behalf of the complainant, testimony of intervenors and argument of counsel heard, and it being the adjournment hour, the further argument is continued until Thursday, January 20, 1938 at 9:30 A.M.

January 20, 1938.

The trial of the above case is resumed, all parties being present as of yesterday.

The remainder of argument of counsel heard and case is taken under submission by the court. Complainant is allowed 15 days to file its brief and defendant and intervenors ten days thereafter for reply.

[Title omitted.]

OPINION, FINDINGS OF FACT AND CONCLUSIONS OF LAW.

[Filed May 9, 1938.]

By this suit the plaintiff asks that the Treasurer of Puerto Rico be enjoined from enforcing certain provisions of Act No. 6 of the Legislature of Puerto Rico approved by the Governor on June 30, 1936, and Act No. 149 of May 15, 1936, amending said Act No. 6 and making the same permanent. It is alleged that the provisions assailed are repugnant to the due process and equal protection and commerce clauses of the Constitution of the United States, and also violative of the provisions of the Organic Act of Puerto Rico. It is further alleged that the provisions of the Federal Alcohol Administration Act of August 29, 1935, as amended, and the Trade-mark Convention between the United States and various American republics, including Cuba, signed February 20, 1929, are also violated. The plaintiff alleges that the requirement that all bills shall refer to one subject, which shall be expressed in the title, is not observed.

On August 23, 1937, this court granted a preliminary injunction *pendente lite* by the terms of which the defendant Treasurer was enjoined and restrained, during the pendency of this suit, and the final disposition thereof, from enforcing or attempting to enforce against the plaintiff the provisions of the said Act of the Legislature of Puerto Rico insofar as the same prohibit the complainant from shipping its products out of Puerto Rico with the label and trade-mark attached thereto, and also insofar as said Acts prohibit complainant from exporting its products to the United States or elsewhere in bulk.

In January, 1938, the case was heard on its merits. Considerable testimony was taken and elaborate briefs have been submitted and considered. The testimony now before me is not materially different from that considered on the motion for a preliminary injunction. A findings of fact as stated in the opinion

filed in the preliminary hearing may be reiterated as the findings of fact in the present hearing.

FINDINGS OF FACT.

Briefly it may be said that the plaintiff herein has invested large sums of money in connection with its business in Puerto Rico. It has been given all necessary permits to enable it to manufacture and sell rum in Puerto Rico and to export the same. It has a contract with Bacardi Corporation of Cuba which authorizes plaintiff to use the labels and trade-marks more particularly described in the written contract which was introduced in evidence. The right to use such labels and trade-marks are of great value to plaintiff.

CONCLUSIONS OF LAW.

A reading of the briefs, without a clear understanding of the testimony and the pleadings, would lead one to the thought that the power of the Legislature of Puerto Rico to regulate the manufacture, sale and traffic in alcoholic beverages within its territory is challenged. No such issue is involved. The Legislature of Puerto Rico, under the Twenty-first Amendment to the American Constitution, has plenary power to regulate the manufacture, sale and traffic in alcoholic liquors within Puerto Rico and even to prohibit such manufacture or sale. It may also impose such restrictions and regulations as it may deem adequate to protect not only the health, safety and morals of the people, but also to promote the general prosperity and adequately protect its industry. It is, therefore, unnecessary to refer further to numerous cases which have been cited to sustain this power.

It has been said by an eminent American jurist that when the police power is invoked two things must appear. First, an evil; second, a remedy calculated to correct the evil. Applying this principle to the instant case, let us see what the evil is as it appears in the challenged legislation. Section 1(b) of Law No. 6 of June 30, 1936 states:

"It has been and is the intention and the policy of this Legis-

lature to protect the nascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

Here we have the evil. What is the remedy provided by the Act? Quoting from Section 44:

"No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside of the Island of Puerto Rico; Provided, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Does the remedy provided correct the evil complained of? It is difficult to see how anyone can urge that it does.

Counsel for defendant and intervenors rely strongly on the opinion of the Supreme Court of the United States in *re Premier-Pabst Sales Co. v. Grosscup*, 298 U. S. 226. This opinion sustains the constitutionality of an Act of the Legislature of Pennsylvania, which Act prohibits the manufacture of beer within the State by persons who are non-residents. In other words, that no beer may be manufactured in Pennsylvania by persons not domiciled within the State. The complainant does not come within the principle

announced. The Bacardi Corporation of America is duly authorized to manufacture its rum in Puerto Rico and to sell it in Puerto Rico or elsewhere. The limitation against which plaintiff complains, and which is not involved in the Pennsylvania case, is that it may not attach to its product a label or trade-mark indicating the quality or the process by which its rum is manufactured, if such label or trade-mark had been previously used outside of Puerto Rico and not used in Puerto Rico prior to February 1, 1936.

The case of the *State Board of Equalization of California v. Young's Market Company*, 299 U. S. 59, is also cited. What does the Young Market Company case decide? It sustains the power of the Legislature of California to require the payment of a license fee of \$750 a year for the privilege of importing or bringing into California beer manufactured outside of the state. It is urged that the principle involved in this decision necessarily implies the same authority over exports as is given over imports. Counsel for one of the interveners state "The Twenty-first Amendment properly construed frees from the Interstate Commerce Clause also exportations". To sustain this proposition we must interpolate into the Twenty-first Amendment language which does not appear therein. Justice Brandeis, who delivered the opinion of the court, states as follows:

"The imposition would have been void, not because it resulted in discrimination, but because the fee would be a direct burden on interstate commerce; and the Commerce Clause confers the right to import merchandise free into any State, except as Congress may otherwise provide. The exaction of a fee for the privilege of importation would not, before the 21st Amendment, have been permissible even if the State had exacted an equal fee for the privilege of transporting domestic beer from its place of manufacture to the wholesaler's place of business."

The Twenty-first Amendment refers only to importations. By necessary implication it excludes from its provisions exportations.

Therefore, the law as to exportation remains as it was before the adoption of the Twenty-first Amendment.

It is insisted that the Legislature of Puerto Rico may prohibit exportations of Puerto Rican products as a proper exercise of the police power to protect its industries by adopting measures which will afford protection to its markets. In support of this proposition there is cited the case of *Sligh v. Kirkwood*, 237 U. S. p. 50, which involved the power of the State of Florida to make it a criminal offense to deliver for shipment in interstate commerce citrus fruits then and there immature and unfit for consumption. The court says:

"We may take judicial notice of the fact that the raising of citrus fruits is one of the great industries of the State of Florida. It was competent for the Legislature to find that it was essential for the success of that industry that its reputation be preserved in other States wherein such fruits find the most extensive market. The shipment of fruits so immature as to be unfit for consumption and consequently injurious to the health of the purchaser, would not be otherwise than a serious injury to the local trade, and would certainly affect the successful conduct of such business within the State. The protection of the State's reputation in foreign markets, with the consequent beneficial effect upon a great home industry, may have been within the legislative intent and it certainly could not be said that this legislation has no reasonable relation to the accomplishment of that purpose."

Let it be conceded that the Legislature of Puerto Rico has the same power to legislate in regard to the rum industry as the State of Florida has to legislate for the protection of citrus fruits. If it had appeared in the Florida case that the fruits offered for exportation were in every respect of high quality and fit for consumption, can anyone doubt that the decision would have been different? In the case before us it is nowhere suggested, in the testimony or the pleadings, that rum manufactured by Bacardi Corporation is

unfit for consumption or in any respect fails to measure up to the quality required by the law and regulations of Puerto Rico. If there is any law in Puerto Rico fixing any standard of quality or providing for any inspection of rum manufactured, or to be manufactured within its borders, it has not been called to my attention. The testimony shows that rum manufactured in Puerto Rico by complainant is produced in accordance with a process or formula which has been used in the manufacture of rum in Cuba and other countries for a period of seventy-five years. This rum may be legally sold in Puerto Rico. It may be exported from Puerto Rico to Continental United States or to any foreign country provided it is sold and exported without attaching a label or trade-mark which complainant has a clear right to use, and which can only mean that the rum within the container, to which the label or trade-mark is attached, is a rum manufactured in accordance with the process or formula owned by citizens of the Republic of Cuba. The testimony is that the rum manufactured by complainant is the same rum produced by the owners of the trade-mark in Cuba.

It will thus be seen that the basis on which the decision in the Florida case rests does not exist in the instant case. If the base fails the house must fall. In this connection it is then urged that rum Bacardi is known throughout the world as a product of Cuba. That it was first manufactured in Cuba seems to be certain. The testimony, however, shows that it has been for many years manufactured in France, in New York State and in Mexico, and probably other countries. I am unable to see how the manufacture in Puerto Rico of a high quality rum in accordance with a formula or process which has stood the test of time can possibly be injurious to the rum industry in Puerto Rico. It should be noted here that on every bottle or container to which the Bacardi label and trade-mark is attached, there is also in prominent letters the words "Puerto Rican Rum".

Puerto Rico produces large quantities of sugar cane. In fact the growing and grinding of sugar cane and production of sugar therefrom is the principal industry of the Island. It is well known

that progressive farmers are constantly seeking improved varieties of cane; cane that will be immune to pests and plant diseases and which will yield a maximum sucrose. Let us suppose that a cane grower in Hawaii has by experiments developed such a type of cane. A grower in Puerto Rico, desiring to avail himself of the advantages to be derived from such improved variety, introduces such cane in Puerto Rico. Would the Legislature of Puerto Rico, in the exercise of its police power, have a right to say that such cane may not be produced in Puerto Rico because it is known as Hawaii cane and to grow or produce Hawaii cane in Puerto Rico would be calculated to injure the reputation of cane originally planted and grown in Puerto Rico?)

It seems to me that instead of being injurious to the rum industry in Puerto Rico, the production of Bacardi here, assuming it to be a superior rum, must naturally aid the industry. It demonstrates to the world that Bacardi may be produced not only in Cuba but elsewhere and especially in Puerto Rico. It certainly cannot be contended that the limitations and restrictions against which plaintiff complains if strictly enforced will in any sense relieve the rum industry in Puerto Rico from the burdens of foreign or absentee capitalism.

If the Legislature of Puerto Rico desires to eliminate all competition by foreign capital as a means of protecting the liquor industry, and so as to avoid the increase and growth of financial absenteeism, there is a very simple and direct way to accomplish this purpose. I know of no reason why the Legislature of Puerto Rico may not, as Pennsylvania has done, deny to any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico. It may limit the number of licenses which may be granted even to residents and citizens of Puerto Rico. I do not mean to say that such a policy would be wise or desirable. That is a legislative question. But, if the evil which the legislation here under consideration condemns is to be eliminated, some method other than that provided must be adopted. It is not contended that the manufacture and sale of complainant's rum in

Puerto Rico or in the United States will unfavorably affect the rum industry, but the thing which makes it objectionable and injurious to the industry is the fact of the use of certain labels or trade-marks.

If the use of what we may term foreign labels or rum produced in Puerto Rico may be permitted without injury to the industry provided that they were so used prior to February 1, 1936, it is difficult to see how the use of other similar labels subsequent to February 1st would be so injurious. The testimony clearly establishes that such labels were and are now used. Whether so intended or not, the Act has the appearance of being so framed as to exclude only the plaintiff. It is difficult to conceive of a more glaring discrimination.

So far we have been dealing with the provisions of Section 44. Complainant also contends that Section 44(b) is an unlawful interference with interstate commerce in that it prohibits plaintiff from shipping its rum in bulk or barrels to Continental United States or to any foreign country. It will be noted that such rum may be legally sold in Puerto Rico in bulk or barrels, but this Act undertakes to deny the plaintiff's right to export it in like containers. This question has been considered by me in an opinion just filed in the case of *Rafael del Valle Pijem v. The Treasurer of Puerto Rico*, and it is unnecessary to elaborate further in this opinion. There can be no doubt that the Legislature of Puerto Rico has the power to regulate or prescribe the size of containers of all alcoholic liquors brought into and offered for sale in Puerto Rico. Rum manufactured in Puerto Rico, in accordance with its laws, becomes a legitimate article of interstate commerce subject, of course, to such restrictions as may be imposed by the Congress of the United States. As indicated elsewhere in this opinion the Twenty-first Amendment to the Constitution gives to States and territories control over importations but it does not in any way effect interstate commerce as to exportations. We then have this situation: Complainant has produced in Puerto Rico a rum which it may sell in Puerto Rico in barrels but may not sell the same

to dealers or manufacturers in Continental United States unless the same is shipped in containers of not more than one gallon. The testimony in the case is conclusive that to require shipments in containers of not more than one gallon is to deny the right to export at all. The cost of such shipment would exceed the value of the commodity.

Counsel for intervenors have urged with a great deal of earnestness that the complainant is in no position to assail the constitutionality of the statute here challenged. Specifically it is urged that at the time the bill of complaint herein was filed the plaintiff had no property right for which it could seek protection in equity. If the plaintiff had no property right at that time, the position of counsel must be sustained. It is submitted that the plaintiff has no property right to be protected because the contract between the Cuban Corporation and Bacardi Corporation of America was not at the time a binding contract. It did not become binding upon the parties until there had been an exchange of ratification between directors of the two companies. This ratification had not taken place at the time this action was brought. If the Cuban company was here denying the right of complainant to use the labels in accordance with the terms of the contract, and if no ratification had taken place, this position would undoubtedly be sound. The testimony, however, clearly shows that even before the formal ratification of the contract, the use of the label and trade-mark by the American company was assented by the Cuban company. Not only so, but it furthermore appears that the Cuban company actually participated in such use of the labels. This is not a contract of lease or assignment of the trade-mark which would require, in order to be legal, a transfer of the business. It seems to me that the right of the Cuban company, under the convention between the United States and certain American republics, including Cuba, would have a right to employ an agent in Continental United States to manufacture rum Bacardi for the account of the Cuban company, and rum so manufactured might lawfully carry the trade-mark or label of the Cuban company. And stripped of all legal

formalities that is what the contract here in question really is. The label is to be used only on rum manufactured in accordance with the formula owned by the company, and is to be produced under the personal supervision of an authorized agent of the Cuban company. The testimony further shows that the Cuban company has a substantial participation in the profits of the American company. The case, therefore, is quite different from those cases involving the assignment of a trade-mark to be used in the uncontrolled discretion of the assignee. As many of the cases state a trade-mark is supposed to designate the source of merchandise, not its manufacture or differently stated, to indicate its quality or character. No particular place of manufacture is necessary to authorize the use of a trade-mark. The trade-mark here in question designates a rum manufactured according to a formula, which formula is owned by the owner of the trade-mark. How there could be any confusion, fraud or deception when the trade-mark is used only on merchandise manufactured under the supervision and direction of the owner of the trade-mark and in accordance with a formula which has been used for more than half a century is beyond my power of comprehension.

It is entirely clear that the power to regulate the liquor industry cannot be measured by the same standard applicable to other industries. Conceding all this, I still am unable to agree that the use of a label or trade-mark, which indicates only the quality of the merchandise offered for sale, in any way comes within the powers conceded.

No case has been called to my attention, and I am quite sure none can be found, which sustains the proposition that the Twenty-first Amendment has in any way limited the power of Congress over interstate commerce, except as it affects importations of alcoholic liquors into a state or territory, or manufacture and sale therein. The exportation and sale of alcoholic liquors manufactured in Puerto Rico, in Continental United States or elsewhere, will in no way deplete the revenues of Puerto Rico. Let us assume that instead of using the labels and trade-marks of the Cuban

company, the plaintiff should put on its goods a label which states that "the rum contained herein is made in Puerto Rico under the direction of the Cuban Bacardi and in accordance with its formula". This would be another way of saying that this is Bacardi rum and that is all that the label and trade-mark say to the public. May a manufacturer of a lawful article of commerce not be free to state just what his article is.

I entertain no doubt that the Legislature of Puerto Rico, in the exercise of its police power, may limit the number of persons or firms who may obtain licenses to manufacture or sell alcoholic liquors within the Island. It may regulate the traffic within Puerto Rico in any way which it deems to be for the best interest of the people, but this cannot mean that a person who is authorized to sell alcoholic liquors within Puerto Rico or to manufacture liquors within the Island, may not use a label or trade-mark to indicate to the public the source and quality of his product. The complainant is granted a license to manufacture and sell rum in Puerto Rico. It may sell the very rum to which it proposes to attach its labels and trade-marks provided it does not attach such labels and trade-marks. I am unable to find any authority or reason to sustain such a proposition.

It is unnecessary to express any opinion as to the allegations in the complaint to the effect that the challenged legislation violates the Treaty between the United States and Cuba. If it were necessary I would be disposed to hold against the contention of the plaintiff. The Treaty gives no preferential advantage to a citizen of Cuba. Any right or privilege which the Treaty creates would be subject to a proper exercise of the police power. Likewise, I would not be disposed to sustain plaintiff's contention to the effect that the legislation violates the provision of the Organic Act in that all bills shall relate to but one subject and that subject shall be expressed in the title.

I am forced to the conclusion that insofar as the challenged legislation prohibits the use of labels and trade-marks by the plaintiff on its product and denies to plaintiff the right to ship its

rum in bulk or barrels from Puerto Rico to the United States or elsewhere, it is invalid. Plaintiff is entitled to a permanent injunction against the defendant, Treasurer of Puerto Rico, insofar as it is proposed to enforce the said provisions of the legislation in question.

San Juan, Puerto Rico, May 9, 1938.

ROBT. A. COOPER,

United States District Judge.

PLAINTIFF'S PROPOSED CONCLUSIONS OF LAW
NOS. 15 AND 16 SUBMITTED BY PLAINTIFF.

[Filed May 24, 1938.]

15. Sections 40, 44 and 44(b) of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937, are invalid as contrary to the Federal Alcohol Administration Act.

16. Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937, prohibiting the use of the Bacardi trade-marks by the plaintiff, conflicts with the provisions of the Trade-Mark Convention of February 20, 1929, between the United States and Cuba, and is invalid.

[Title omitted.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

[Filed June 28, 1938.]

Since the filing of my opinion on May 9, 1938, including findings of fact and conclusions of law, counsel for plaintiff corporation have requested more specific findings of fact and conclusions of law. While I think this is unnecessary in order to comply with pertinent equity rules, I have concluded to make further and more specific findings in order to remove any doubt in regard to the question. In said opinion the findings of fact on motion for preliminary injunction are adopted by reference. I did not think it necessary to set them out *in extenso*. Accordingly, I find the following:

FINDINGS OF FACT.

1. Since April 24, 1934, plaintiff, Bacardi Corporation of America, has been and still is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. It is authorized by its charter to manufacture, produce, distill and re-distill, develop, rectify, blend, mix, purify, recover, flavor and denaturize alcohol or alcoholic liquors for beverage purposes.

2. Plaintiff, Bacardi Corporation of America, was registered to do business in Puerto Rico on March 31, 1936, under the laws of Puerto Rico relative to foreign corporations, and on April 6, 1936 received from the Treasurer of Puerto Rico a license to do business in Puerto Rico as a foreign corporation.

3. Defendant, Rafael Sancho Bonet, is the Treasurer of Puerto Rico, a citizen of the United States of America and Puerto Rico and resident and domiciled in Puerto Rico and is charged under the laws of Puerto Rico with the duty, among others, of administering the Alcoholic Beverage Laws of Puerto Rico.

4. This is a case of a civil nature between a citizen of the State of Pennsylvania and a citizen of the State of Puerto Rico wherein the amount in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.

5. Plaintiff attacks Sections 40, 44(b) and 97(b) of Act No. 6 of the Puerto Rican Legislature, as amended by Act No. 149, and also Section 7 of said Act No. 149. The pertinent provisions of these sections read as follows:

"Section 40. Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content of volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English 'Puerto Rican Rum', in letters not

- less than five-sixteenths ($5/16$) of an inch high and of lines of one-sixteenth ($1/16$) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths ($4/5$) of a pint and less the phrase 'Puerto Rican Rum' must appear on the label in letters not less than one-eighth ($1/8$) of an inch high, said phrase to be not less than one and one-half ($1\frac{1}{2}$) inches long. On the label of every alcoholic beverage shall also appear the word distilled, rectified, or blended, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; Provided, further, That the trade-mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears."

"Section 44. No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; Provided, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico, on or before February 1, 1936."

"Section 44(b). Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the Continental

United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; Provided, That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof the Treasurer is empowered to authorize the sale of such stock, in barrels of 40 gallons or more, either for sale in Puerto Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith, for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled."

"Section 97(b). Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceeding as may be necessary, to demand protection against violation of this Act, on the part of other person, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty thousand (30,000) dollars."

"Section 7. In regard to trade-marks, the provisions of the Proviso of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade-marks as shall have been used exclusively in the

Continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1, 1936, provided such trade-marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the Continental United States, at any time prior to said date."

6. Continuously since 1862 Compañia Ron Bacardi, S.A., a corporation organized under the laws of the Republic of Cuba, and its predecessors have been, and Compañia Ron Bacardi, S.A. now is, engaged in the business of producing and selling alcoholic liquors, principally rum, throughout the world.

7. For more than twenty years, except for the period during national prohibition, Compañia Ron Bacardi, S.A. and its predecessors have sold alcoholic liquors, principally rum, in Puerto Rico and elsewhere throughout the United States under trade-marks including the word "Bacardi", "Bacardi y Cia.", the representation of a bat in a circular frame, and certain distinctive labels. These trade-marks were duly registered in the United States Patent Office and in the Office of the Executive Secretary of Puerto Rico prior to the passage of the laws complained of in this suit.

8. During the years 1933 to 1937, inclusive, Compañia Ron Bacardi, S.A. has sold in the United States more than three hundred seventy-five thousand (375,000) cases of rum bearing the registered trade-marks and labels set forth in 7 above and has spent over three hundred thousand dollars (\$300,000) in advertising to the public Bacardi rum bearing said trade-marks.

9. On June 8, 1934, and during the period since then the registered trade-marks and labels set forth in 7 above were and still are of great value to the plaintiff.

10. On June 8, 1934, plaintiff, Bacardi Corporation of America entered into a written agreement with Compañia Ron Bacardi, S.A., by the terms of which the Cuban company authorized the plaintiff to manufacture and sell rum in certain localities and to use the trade-marks and labels (commonly known as the Bacardi

trade-marks and labels) belonging to the Cuban company and set forth in 7 above in connection with such manufacture and sale. On December 19, 1935, Bacardi Corporation of America entered into a supplementary agreement with Compania Ron Bacardi, S.A., extending the territory covered by the contract of June 8, 1934 to include Puerto Rico. The contract of June 8, 1934 provides that all rum manufactured and offered for sale by the plaintiff, Bacardi Corporation of America, to which the said trade-marks and labels are attached, is to be manufactured under the supervision of Compania Ron Bacardi, S.A., and is to be the same rum that the Cuban company manufactures and sells under the said trade-marks and labels.

11. That the contract between the Cuban company and the plaintiff company was formally ratified by the two companies, but even before the formal ratification, the use of the labels and trade-marks by the plaintiff was assented to by the Cuban company which actually participated in the use of said labels by plaintiff.

12. Bacardi rum is and always has been made according to definite processes and methods. It has been extensively advertised and it enjoys an excellent reputation. In accordance with the contract of June 8, 1934, the secret processes and methods under which Bacardi rum is made have been made available to the plaintiff. Plaintiff, in order to comply with the contract of June 8, 1934 by producing rum in Puerto Rico of the identical quality of that produced in Cuba by Compania Ron Bacardi, S.A., has used the secret processes and methods of Cuban Bacardi and brought to Puerto Rico from Cuba experts and technicians who have supervised the manufacture of rum for the plaintiff in Puerto Rico. The rum so manufactured in Puerto Rico by the plaintiff is made according to the secret methods and processes made available to plaintiff under the aforesaid contract and is the same product heretofore sold in the United States and Puerto Rico under the trade-marks set forth in paragraph 7 of these findings.

13. In March, 1936, plaintiff made arrangements for the installation in Puerto Rico of a plant for the conduct of its business.

It leased a building at a yearly rental of ninety-six hundred dollars (\$9,600) and expended about forty-five thousand dollars (\$45,000) for the installation of its plant. Up to the present time plaintiff's total investment in the said plant and manufactured product exceeds the sum of six hundred thousand dollars (\$600,000).

14. The right to use the Bacardi trade-marks and labels conferred to plaintiff under the contract of June 8, 1934 is a valuable property right. These trade-marks and labels symbolize a valuable good will and are of great value to the plaintiff in marketing its commodity.

15. Plaintiff has basic permits from the Federal Alcohol Administration to warehouse, rectify and bottle alcoholic beverages in Pennsylvania, which permits were amended on March 8, 1936 so as to authorize plaintiff to operate its business in Puerto Rico. Plaintiff also obtained from the Federal Alcohol Administrator basic permits to distill in Puerto Rico. On July 20, 1936 plaintiff obtained permits for the same purpose from the Treasurer of Puerto Rico.

16. On May 18, 1937, September 1 and September 3, 1937 the Federal Alcohol Administrator authorized plaintiff to use on rum manufactured in Puerto Rico certain labels in conformity with the Federal regulations on the subject and containing the registered trade-marks which plaintiff, by virtue of the contract of June 8, 1934, has a right to use.

17. A specimen of the label which plaintiff uses and proposes to use on rum manufactured and to be manufactured in Puerto Rico is as follows [on page 113]:

18. Plaintiff has in stock in Puerto Rico about three hundred fifty thousand (350,000) gallons of rum and is ready to bottle and ship that rum to the United States in quantities of approximately ten thousand (10,000) cases per month.

19. Plaintiff has or doubtless will have offers for the shipment of rum in bulk from Puerto Rico to the United States and is desirous of making such shipments

CARTA DE PLATA

PUERTO RICAN RUM

Ron Superior

PREPARED & BOTTLED BY

BACARDI CORP.
OF AMERICA

SAN JUAN, P.R.

89 PROOF - 4/5 QUART



Produced in Puerto Rico by Special Authority and under the supervision of
COMPAÑIA RON BACARDI, S.A. SANTIAGO DE CUBA

SOLE DISTRIBUTORS IN U.S.A. SCHENLEY IMPORT CORP. NEW YORK, N.Y.

20. Plaintiff appears to be the only company unfavorably affected by the provisions of the several acts as to the use of labels or trade-marks, although there are at least three other companies now operating in Puerto Rico who use on their products trade-marks and labels which were previously, in whole or in part, used outside the Island of Puerto Rico.

21. If plaintiff is prohibited from using the trade-marks and labels herein referred to it will suffer irreparable damage.

22. The cost of shipping rum in containers of one-gallon capacity or less is greater than the cost of shipping rum in larger containers.

23. That the requirement that shipments of rum be made in containers of not more than one gallon is to deny the right to export rum in bulk, as the cost of such shipments would exceed the value of the commodity.

24. There is no law in force at the present time in Puerto Rico fixing any standard of quality or providing for any inspection of rum manufactured or to be manufactured within Puerto Rico.

25. The exportation and sale of alcoholic liquors manufactured in Puerto Rico, in Continental United States or elsewhere, will in no way deplete the revenues of Puerto Rico.

26. That if the plaintiff is not permitted to use its corporate name its business will be greatly damaged and it will suffer great and irreparable loss.

CONCLUSIONS OF LAW.

1. At the time of the commencement of this action and since April 24, 1934, plaintiff was and still is a corporation duly organized and existing under the laws of the State of Pennsylvania.

2. Since March 31, 1936, plaintiff has been duly licensed to do business in Puerto Rico as a foreign corporation.

3. The Bacardi trade-marks referred to in the findings of fact were at all the times mentioned therein and still are valid and subsisting trade-marks.

4. Plaintiff has the lawful right to use the Bacardi trade-marks in Puerto Rico or elsewhere in the United States.

5. The contract dated June 8, 1934, as modified on December 19, 1935, was duly ratified by the parties thereto and is sufficient in law to authorize the plaintiff to use the Bacardi trade-marks. The right to use said trade-marks is a valuable property right.

6. The Bacardi trade-marks, as used in connection with the advertisement and sale of the rum manufactured by plaintiff, truthfully designate the product and its origin, and are not deceptive or misleading.

7. Plaintiff comes into equity with clean hands.

8. Rum manufactured in Puerto Rico is a legitimate article of commerce, subject only to such restrictions as to exportation as may be imposed by Congress, and such restrictions as to imports and traffic within Puerto Rico as may be imposed by the Legislature of Puerto Rico.

9. Rum manufactured by plaintiff in Puerto Rico may be legally sold in Puerto Rico and exported to the United States or any foreign country.

10. The provisions of Act No. 6 of June 30, 1936, as amended by Act No. 149, approved May 15, 1937, prohibiting the use of certain trade-marks and corporate names, are an unreasonable and arbitrary interference with the enjoyment of property, are not a valid exercise of the police power, and violate the due process clause of the Constitution of the United States and the Organic Act of Puerto Rico and are invalid.

11. The provisions of Act No. 6 of June 30, 1936, as amended by Act No. 149, approved May 15, 1937, which restrict the use of certain trade-marks and corporate names, discriminate arbitrarily against the plaintiff, violate the equal protection clause of the Constitution of the United States and the Organic Act of Puerto Rico, and are invalid.

12. Plaintiff has a right to use its corporate name.

13. The provisions of Section 44(b) of Act No. 149, approved May 15, 1937, violates the due process clause of the Constitution of the United States and of the Organic Act of Puerto Rico insofar

as it prohibits the exportation of rum legally manufactured in Puerto Rico in containers of more than one gallon.

14. Sections 44 and 44(b) of Act No. 149, approved May 15, 1937, violate the commerce clause of the Constitution of the United States insofar as said sections prohibit the use of labels or trade-marks on rum otherwise legally manufactured in Puerto Rico, and insofar as it prohibits the exportation of rum otherwise legally manufactured in containers of more than one gallon.

15. Plaintiff has no plain and adequate remedy at law and is entitled to a decree for the relief prayed for in the bill of complaint and in accordance with the opinion filed herein on May 9, 1938.

San Juan, Puerto Rico, June 28, 1938.

ROBT. A. COOPER,

United States District Judge.

FINAL DECREE.

[Filed June 30, 1938.]

This cause came on to be heard on the merits before me on the 17th, 18th, 19th and 20th of January, 1938, and evidence, both oral and documentary, was submitted, and the cause argued by counsel. Upon consideration thereof and based upon the findings of fact as found in the opinion of the court dated August 23, 1937, in connection with the motion for a preliminary injunction, and ratified in the opinion of the court filed herein on May 9, 1938, and the further findings of fact and the conclusions of law set forth in the said opinion of May 9, 1938, which are hereby ratified and adopted by the court, and upon the further findings of fact and conclusions of law determined by the court on June 28, 1938.

It is ordered, adjudged and decreed: That the defendant Rafael Sancho Bonet, Treasurer of Puerto Rico, his successors, his agents and all those acting under his authority, and the Destileria Serralles, Inc., the Puerto Rico Distilling Company, their successors, officers and agents, and any and all persons holding permits from the Treasurer of Puerto Rico under the alcoholic beverages laws of

Puerto Rico, be and are hereby forever and perpetually enjoined and restrained from in any way enforcing or attempting to enforce against the plaintiff Bacardi Corporation of America the provisions of Sections 40 and 44 of Act No. 6 approved June 30, 1936, as amended by Act No. 149 approved May 15, 1937, and the provisions of Section 7 of said Act 149, insofar as said provisions prohibit complainant from marketing its products in Puerto Rico or shipping its products out of Puerto Rico with the Bacardi trademarks and labels attached thereto as now or hereafter authorized by the Federal Alcohol Administration, and from using its corporate name on its products; and also, from in any way enforcing or attempting to enforce against said plaintiff the provisions of Section 44(b) of said Act No. 6 as amended by said Act No. 149, insofar as said provisions prohibit the plaintiff from shipping its products to the United States or elsewhere in bulk;

That the bond in the sum of \$10,000 filed by the plaintiff in this case pursuant to the order of this court dated August 23, 1937 granting the plaintiff a preliminary injunction be and is hereby cancelled; and

That the complainant have and recover from the defendant and the interveners its taxable costs and disbursements herein to be taxed by the clerk of this court.

Dated at San Juan, Puerto Rico, this thirtieth day of June, 1938.

ROBT. A. COOPER,

United States District Judge.

PLAINTIFF'S EXCEPTION TO THE CONCLUSIONS OF LAW.

[Filed June 30, 1938.]

Now comes the plaintiff in the above entitled cause through its undersigned attorneys, and respectfully files herewith its exception to the action of the court in not including among the conclusions of law determined on June 28, 1938, the following conclusions which the plaintiff had submitted as pertinent and proper:

That Sections 40, 44 and 44(b) of Act No. 6 of June 30,

1936, as amended by Act No. 149 of May 15, 1937, are invalid as contrary to the Federal Alcohol Administration Act.

That Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937, prohibiting the use of the "Bacardi" trade-marks by the plaintiff, conflicts with the provisions of the Trade-mark Convention of February 20, 1929 between the United States and Cuba, and is invalid.

San Juan, Puerto Rico, June 30, 1938.

HARTZELL, KELLEY & HARTZELL,

by RAFAEL FERNANDEZ,

Attorneys for Plaintiff.

MEMORANDUM.

August 23, 1938, Petition of Destileria Serralles, Inc., intervener.

August 23, 1938, Order allowing appeal.

August 24, 1938, Cost bond \$500 surety, Maryland Casualty Co.

August 24, 1938, Citation on appeal issued, served on plaintiff on August 24, 1938.

August 24, 1938, Petition for appellant Rafael Sancho Bonet, Treasurer of Puerto Rico, defendant.

August 24, 1938, Order allowing appeal.

August 24, 1938, Cost bond \$500 surety, Maryland Casualty Co.

August 24, 1938, Citation on appeal issued August 24, served on complainant on August 24, 1938.

ASSIGNMENT OF ERRORS.

[Filed August 23, 1938.]

Now comes Destileria Serralles, Inc., one of the interveners in the above entitled cause by its undersigned attorneys and respectfully states that in the record, the proceedings, the evidence and the final decree entered in this case by the United States District Court for the District of Puerto Rico, there is manifest error in this, to wit:

1. That the court erred in not holding that plaintiff has no legal standing to challenge the validity of Act No. 6 enacted by the

Legislature of Puerto Rico on June 30, 1936 (Law of Puerto Rico, Special Session, 1936, p. 44) as amended by Act No. 149 enacted May 15, 1937 (Law of Puerto Rico, Special Session 1937, p. 395).

2. That the court erred in holding that rum manufactured by plaintiff in Puerto Rico may be legally sold in Puerto Rico and exported to the United States.

3. That the court erred in holding that the provisions of Section 44 of Act No. 6 enacted by the Legislature of Puerto Rico on June 30, 1936 (Law of Puerto Rico, Special Session 1936, p. 44) as amended by Act No. 149 enacted May 15, 1937 (Laws of P. R. Special Session 1937, p. 395) prohibiting the use of certain trade-marks, labels and corporate names, constitute an unreasonable or arbitrary interference with the enjoyment of property.

4. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names are not a proper exercise of the police power by the Legislature of Puerto Rico.

5. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936 as amended by Act No. 149 enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names violate the due process clause of the Constitution of the United States.

6. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted on May 15, 1937, which prohibit the use of certain trade-marks, labels and corporate names violate the due process clause of the Organic Act of Puerto Rico.

7. That the court erred in holding and deciding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149, enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names discriminate arbitrarily against the plaintiff.

8. That the court erred in holding and deciding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by

Act No. 149 enacted May 15, 1937, which restrict the use of certain trade-marks, labels and corporate names violate the equal protection clause of the Constitution of the United States.

9. That the court erred in holding that the provisions of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, which restrict the use of certain trade-marks, labels and corporate names violate the equal protection clause of the Organic Act of Puerto Rico.

10. That the court erred in holding and deciding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, and which prescribe the size of the containers in which exportations of rum shall take place, violate the due process clause of the Constitution of the United States.

11. That the court erred in holding and deciding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, and which prescribed the size of the containers in which exportations of rum shall take place, violate the due process clause of the Organic Act of Puerto Rico.

12. That the court erred in holding and deciding that Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names violates the commerce clause of the Constitution of the United States.

13. That the court erred in holding and deciding that Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 of June 30, 1936, violates the commerce clause of the Constitution of the United States insofar as it prescribes the size of containers in which rum shall be exported from Puerto Rico.

14. That the court erred in holding that it is beyond the powers of the Legislature of Puerto Rico to prohibit the use of certain trade-marks, labels and corporate names in regulating the manufacture and sale of rum in Puerto Rico.

15. That the court erred in holding that it is beyond the powers of the Legislature of Puerto Rico in regulating the manufac-

ture of rum in Puerto Rico, to prescribe the size of the containers in which rum may be exported.

16. That the court erred in failing to hold that the provisions contained in Section 44 of Act No. 6 of June 30, 1936 as amended by Act No. 149 enacted on May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names are valid as a proper exercise of the police power of Puerto Rico to protect its liquor industry.

17. That the court erred in failing to hold that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 enacted June 30, 1936, which prescribe the containers in which exportations of rum shall take place are valid as a proper exercise of the police power of Puerto Rico for the protection of its liquor industry.

18. That the court erred in failing to hold that the provisions contained in Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names are well calculated to protect the liquor industry of Puerto Rico from unfair competition.

19. That the court erred in failing to hold that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 of June 30, 1936, which prescribe the containers in which exportations shall take place are well calculated to protect the liquor industry of Puerto Rico from unfair competition.

20. That the court erred in granting a permanent injunction.

21. That the decree is contrary to law.

22. For all other errors apparent from the record.

Wherefore intervener-appellant prays that said decree may be reversed and remanded with direction to proceed in accordance with the law.

San Juan, Puerto Rico, August 23, 1938.

ANTONIO J. MATTA,

J. SIFRE, JR.,

Attorneys for DESTILERIA SERRALLES, INC.,

Intervenor-Appellant.

ASSIGNMENT OF ERRORS.

[Filed August 24, 1938.]

Now comes Rafael Sancho Bonet, Treasurer of Puerto Rico, defendant in the above entitled cause by its undersigned attorneys and respectfully states that in the record, the proceedings, the evidence and the final decree entered in this case by the United States District Court for the District of Puerto Rico, there is manifest error in this, to wit:

1. That the court erred in holding that plaintiff has legal standing, to challenge the validity of Act No. 6 enacted by the Legislature of Puerto Rico on June 30, 1936 (Law of Puerto Rico, Special Session, 1936, p. 44) as amended by Act No. 149 enacted May 15, 1937 (Law of Puerto Rico, Special Session 1937, p. 395).
2. That the court erred in holding that rum manufactured by plaintiff in Puerto Rico may be legally sold in Puerto Rico and exported to the United States.
3. That the court erred in holding that the provisions of Section 44 of Act No. 6 enacted by the Legislature of Puerto Rico on June 30, 1936 (Law of Puerto Rico, Special Session, 1936, p. 44) as amended by Act No. 149 enacted May 15, 1937 (Laws of P. R., Special Session 1937, p. 395) prohibiting the use of certain trade-marks, labels and corporate names, constitute an unreasonable or arbitrary interference with the enjoyment of property.
4. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names are not a proper exercise of the police power by the Legislature of Puerto Rico.
5. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936 as amended by Act No. 149 enacted May 15, 1937; prohibiting the use of certain trade-marks, labels and corporate names violate the due process clause of the Constitution of the United States.

6. That the court erred in holding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted on May 15, 1937, which prohibit the use of certain trade-marks, labels and corporate names violate the due process clause of the Organic Act of Puerto Rico.

7. That the court erred in holding and deciding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting the use of certain trade-marks, labels and corporate names discriminate arbitrarily against the plaintiff.

8. That the court erred in holding and deciding that the provisions of Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, which restrict the use of certain trade-marks, labels and corporate names violate the equal protection clause of the Constitution of the United States.

9. That the court erred in holding that the provisions of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937 which restrict the use of certain trade-marks, labels and corporate names violate the equal protection clause of the Organic Act of Puerto Rico.

10. That the court erred in holding and deciding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, and which prescribe the size of the container in which exportations of rum shall take place, violate the due process clause of the Constitution of the United States.

11. That the court erred in holding and deciding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, and which prescribe the size of the containers in which exportations of rum shall take place, violate the due process clause of the Organic Act of Puerto Rico.

12. That the court erred in holding and deciding that Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names violates the commerce clause of the Constitution of the United States.

13. That the court erred in holding and deciding that Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 of June 30, 1936, violates the commerce clause of the Constitution of the United States insofar as it prescribes the size of container in which rum shall be exported from Puerto Rico.

14. That the court erred in holding that it is beyond the powers of the Legislature of Puerto Rico to prohibit the use of certain trade-marks, labels and corporate names in regulating the manufacture and sale of rum in Puerto Rico.

15. That the court erred in holding that it is beyond the powers of the Legislature of Puerto Rico is regulating the manufacture of rum in Puerto Rico, to prescribe the size of the containers in which rum may be exported.

16. That the court erred in not holding that the provisions contained in Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted on May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names are valid as a proper exercise of the police power of Puerto Rico to protect its liquor industry.

17. That the court erred in not holding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 enacted June 30, 1936, which prescribe the containers in which exportations of rum shall take place are valid as a proper exercise of the police power of Puerto Rico for the protection of its liquor industry.

18. That the court erred in not holding that the provisions contained in Section 44 of Act No. 6 of June 30, 1936, as amended by Act No. 149 enacted May 15, 1937, prohibiting and restricting the use of certain trade-marks, labels and corporate names are well calculated to protect the liquor industry of Puerto Rico from unfair competition.

19. That the court erred in not holding that the provisions of Section 44(b) of Act No. 149 enacted May 15, 1937, amending Act No. 6 of June 30, 1936, which prescribe the containers in which exportations shall take place are well calculated to protect the liquor industry of Puerto Rico from unfair competition.

20. That the court erred in granting a permanent injunction.

21. For all other errors apparent from the record.

Wherefore defendant-appellant prays that the decree entered herein on the thirtieth day of June, 1938 be reversed and for such other and further relief as to the court may seem just and proper.

San Juan, Puerto Rico, August 24, 1938.

B. FERNANDEZ GARCIA,

Attorney General.

ENRIQUE CORDOVA DIAZ,

Assistant Attorney General.

JESUS A. GONZALEZ,

Assistant Attorney General.

STIPULATION AS TO ONE RECORD.

[Filed December 21, 1938.]

The undersigned, all being parties to the above entitled suit, and all having obtained leave to appeal from the decree of the Honorable Robert A. Cooper, Judge of the District Court of the United States for the District of Puerto Rico, entered on June 30, 1938, enjoining defendant from enforcing the provisions of Sections 40 and 44 of Act No. 6 approved June 30, 1936, as amended by Act No. 149 approved May 15, 1937, and the provisions of Section 7 of said Act 149, and desiring to avoid multiplicity of records on appeal herein, do hereby stipulate and agree that there be one record on appeal for all the undersigned appellants and that the argument of the appeals of the undersigned appellants be heard by the Circuit Court of Appeals on the said single record.

San Juan, Puerto Rico, December 20, 1938.

B. FERNANDEZ GARCIA, *Attorney General,*

JESUS A. GONZALEZ, *Assistant Attorney General,*

Solicitors for RAFAEL SANCHO BONET,

Defendant-Appellant.

JAIME SIFRE, Jr.,

Solicitor for DESTILERIA SERRALLES, INC.,

Intervener-Appellant.

ORDER.

[Filed December 21, 1938.]

Upon stipulation of appellants Rafael Sancho Bonet and Destileria Serralles, Inc., it is hereby ordered that there be one record on appeal for the said appellants and that the argument on appeal be heard by the Circuit Court of Appeals on the said single record.

ROBT. A. COOPER,

District Judge.

[Title omitted.]

MOTION FOR CORRECTIONS TO STATEMENT OF EVIDENCE.

[Filed January 26, 1939.]

XXIII. That all evidence, both oral and documentary of the intervenor Puerto Rico Distilling Co., appearing on pages 60 to 66 both inclusive, of the statement of evidence, be eliminated, as the said intervenor has not taken an appeal in this case and the said evidence was not in any way adopted by the defendant nor by the other intervenor.

ORDER.

[Filed February 11, 1939.]

On January 26, 1939, plaintiff-appellee, the Bacardi Corporation of America, filed a motion proposing certain corrections to the statement of the evidence filed in the above entitled cause by intervenor-appellant Destilleria Serralles, Inc.

The said parties having been heard on the said motion, all amendments and corrections asked for by plaintiff-appellee are granted and ordered made as requested, with the following exceptions:

Proposed amendment number XXIII, requesting the exclusion of all the evidence introduced on behalf of intervenor Puerto Rico Distilling Company, is denied. To this ruling plaintiff-appellee excepted.

As to proposed amendment number XXIV, requesting that

Plaintiff's Exhibit "B" be copied in its entirety, including the English text of the trade-mark Convention and protocol it will be sufficient to make reference to United States Statutes at Large (71st Congress 1929-31) Volume 46, Part 2, pages 2907 to 2977, wherein the said Convention and protocol are set forth in full.

As to proposed amendment number XXXVII, requesting that Plaintiff's Exhibit marked "Identification No. 1", namely the Memorial of the Puerto Rican rum producers to the Legislature of Puerto Rico, be transcribed in full, since said memorial forms part of the bill of complaint, a reference in the statement of the evidence to "Plaintiff's Exhibit Memorial" attached to the complaint will be sufficient.

Given at San Juan, P. R., February 11, 1939.

ROBT. A. COOPER,

United States District Judge.

[MEMORANDUM. Orders of enlargement of time for filing, settling and approval of the statement of evidence are here omitted. A. I. CHARRON, *Clerk.*]

[Title omitted.]

STATEMENT OF EVIDENCE.

[Filed February 24, 1939.]

Be it remembered that this cause came on for hearing on its merits before the Honorable Robert A. Cooper, Judge of the United States District Court for Puerto Rico, sitting at San Juan, Puerto Rico, the trial commencing on January 17, 1938, and continuing thereafter; the plaintiff, Bacardi Corporation of America, being represented by Messrs. Hartzell, Kelley & Hartzell, and Rafael O. Fernandez, Esq. and Jerome L. Isaacs, Esq., of counsel; the defendant, Sancho Bonet, Treasurer of Puerto Rico, being represented by Jesus A. Gonzalez, Assistant Attorney General of Puerto Rico; the intervenor, Puerto Rico Distilling Co., being represented by Miguel Guerra Mondragon, Esq.; and the intervenor

Destileria Serralles, Inc., being represented by Jaime Sifre, Jr., Esq. and Antonio J. Matta, Esq.

Plaintiff's Case.

Plaintiff introduced in evidence the Article of Incorporation of Bacardi Corporation of America in Pennsylvania.

Admitted without objection and document marked "Exhibit A for the Plaintiff".

Plaintiff introduced in evidence a certified copy of the convention and protocol between the United States of America and other American republics concerning trade-marks, etc., signed at Washington on February 20, 1929.

Mr. Sifre: Objected to on the ground that this evidence is impertinent, incompetent and irrelevant.

The Court: Objection overruled.

Mr. Sifre: Exception.

Mr. Guerra: Same objection and same exception, your Honor.

[Document marked "Exhibit B for the Plaintiff".]

Plaintiff then introduced a certified copy of the registration of the trade-mark representing a bat in a circle, duly certified by the Department of Commerce, Registration No. 302,916 of May 2, 1933.

Received in evidence without objection and document marked "Exhibit C for the Plaintiff".

Plaintiff introduced certified copy of the registration of Compania Ron Bacardi, S.A. Registration No. 310,654, of March 6, 1934.

Received without objection and document marked "Exhibit D for the Plaintiff".

Mr. Fernandez: I want to correct a statement I made. I said the registered trade-mark was "Compania Ron Bacardi, S.A." It should be "Bacardi".

Plaintiff introduced certificate of registration of the Bacardi label and medals. Registration No. 331,459 of January 7, 1936.

Received without objection and document marked "Exhibit E for the Plaintiff".

Plaintiff introduced in evidence certificate of registration of Bacardi, Carta Blanca. Registration No. 338,241 of September 1, 1936.

Received without objection and marked "Exhibit F for the Plaintiff".

Plaintiff introduced in evidence certificate of registration of Bacardi, Carta de Oro, Registration No. 337,254 of August 4, 1936.

Received without objection and marked "Exhibit G for the Plaintiff".

Plaintiff introduced in evidence certificate of registration of Ron Bacardi Superior, Carta de Oro, being registration No. 331,460 of January 7, 1936.

Received without objection and document marked "Exhibit H for the Plaintiff".

Plaintiff introduced in evidence certificate of registration of Bacardi y Cia. registration No. 327,649 of September 3, 1935.

Received without objection and marked "Exhibit I for the Plaintiff".

Plaintiff offered in evidence registration of the label Ron Bacardi Superior with the Executive Secretary of Puerto Rico on April 10, 1935, No. 3919; Registration of Bacardi, April 10, 1935, No. 3916; Registration of a bat in a circle, April 10, 1935, No. 3917, and Registration of Bacardi Superior, Carta de Oro April 10, 1935, No. 3918.

The above registrations are in the name of Cia. Ron Bacardi, S.A.

Received without objection and documents marked "Exhibits J", "K", "L" and "M for the Plaintiff".

Plaintiff offered in evidence certificate from the Treasury Department of the United States regarding permit to Bacardi Corporation of America No. 542, and approval of the label.

Received without objection and marked "Exhibit N for the Plaintiff".

Plaintiff introduced in evidence two new approvals of labels by the Federal Alcohol Administration dated September 1, and September 3, 1937, that is, after the date of the filing of the complaint.

Mr. Guerra: Objected to on the ground that these are permits issued after the filing of the bill of complaint.

Mr. Gonzalez: Same objection for the Government.

The Court: Objections overruled.

Messrs. Gonzalez and Guerra: Exception.

[Document marked "N-1" and "N-2 for the Plaintiff".]

Plaintiff offered in evidence certificate as to the permits of the Bacardi Corporation of America in Pennsylvania.

Received without objection and marked "Exhibit O for the Plaintiff".

Plaintiff offered in evidence certificate of registration of Bacardi Corporation of America in Puerto Rico.

Received without objection and marked "Exhibit P for the Plaintiff".

Plaintiff offered in evidence certificate No. 161 of April 6, 1936, No. 29 of July 15, 1936, and No. 56 of August 2, 1937. Said certificates being licenses issued by the Treasurer of Puerto Rico to do business in Puerto Rico.

Received without objection and documents marked "Exhibits Q", "R" and "S for the Plaintiff".

Plaintiff offered in evidence Permit No. 1-R of the Treasurer of Puerto Rico to the Bacardi Corporation of America dated July 20, 1936.

Received without objection and marked "Exhibit T for the Plaintiff".

Plaintiff offered in evidence a copy of a Memorial addressed by the rum producers of Puerto Rico to the Legislature of Puerto Rico, in February, 1937.

Mr. Sifre: Objected to on the ground that it is incompetent, immaterial and irrelevant.

Messrs. Gonzalez and Guerra: Same objection, your Honor.

[After discussion.]

The Court: I will have to sustain the objection. It makes no difference what may have been the motive. They had a perfect right to urge that upon the Legislature, if they thought it was wise; but we must determine here whether or not there is any discrimination by the Act of the Legislature.

Mr. Isaacs: Takes an exception.

[Document marked "Identification No. 1 for Plaintiff".

Admission refused.]

Plaintiff offered in evidence a contract and license agreement between Compania Ron Bacardi, S.A. of Cuba, and Bacardi Corporation of America, dated June 8, 1934.

Mr. Sifre: Objected to upon the ground that the covenant confers no right to the trade-mark which the Plaintiff is endeavoring to protect by its action and therefore this evidence is incompetent, immaterial and irrelevant.

Mr. Guerra: Same objection.

The Court: Objection overruled.

Messrs. Sifre and Guerra: Exception, please.

[Document substituted by certified copy without objection and marked "Exhibit V for the Plaintiff".]

Plaintiff introduced an amendment to the agreement marked "Exhibit V" dated December 19, 1935.

Messrs. Sifre, Guerra and Gonzalez: Same objection as was made in regard to the original agreement.

The Court: Objection overruled.

Messrs. Sifre, Guerra and Gonzalez: Exception.

Document received in evidence marked "Exhibit W for the Plaintiff".

Plaintiff introduced a duplicate original of an agreement of March 6, 1936, between Porto Rican American Tobacco Company and the Bacardi Corporation of America for the lease of the build-

ing in which the Bacardi Corporation of America has its plant in San Juan, Puerto Rico.

Received without objection marked "Exhibit X for the Plaintiff".

Plaintiff introduced in evidence certified copy of Deed No. 8 of July 22, 1936, before notary public P. Juvenal Rosa, being a lease and an option of purchase between Porto Rican American Tobacco Co. and plaintiff.

Received without objection marked "Exhibit Y for Plaintiff".

Plaintiff introduced in evidence copy of a letter addressed by the plaintiff to the Treasurer on March 31, 1936, requesting inspection of premises, issuance of certificate and fixing amount of bond under Law 38 of July 30, 1935.

Received without objection marked "Exhibit Z for the Plaintiff".

Plaintiff offered in evidence the answer of the Treasurer to the above letter dated April 6, 1936, in which the building and location were approved and the bond fixed at \$10,000.

Received without objection and marked "Exhibit AA for the Plaintiff".

Plaintiff introduced a letter of the Bacardi Corporation of America to the Treasurer requesting renewal of permits 1-R of July 20, 1936, 11-D of July 30, 1936, 55 of August 11, 1936, 16-A of September 19, 1936, and 13 of August 18, 1936.

Received without objection and marked "Exhibit AB for Plaintiff".

Plaintiff offered in evidence the answer of the Treasurer of Puerto Rico to the above letter, dated September 29, 1936, stating that under Section 45 of Law of June 30, 1936, there is no need for the renewal of permits.

Received without objection and document marked "Exhibit AC for the Plaintiff".

Plaintiff introduced a letter of the Bacardi Corporation of America to the Treasurer of Puerto Rico, dated July 16, 1936, applying for rectifying and distilling permits and challenging constitu-

tionality of Law 115 of May 15, 1936. The document offered is a copy, admitted to be correct by the Treasurer.

Received without objection and document marked "Exhibit AE for the Plaintiff".

Plaintiff offered sample of label used by National Liquor Company, Inc., Hato Rey, of the Daiquiri Coctelera rum.

Mr. Sifre: Objected to upon the ground that it is incompetent, irrelevant and immaterial. No evidence whatever has been produced which would serve as a basis for the admission of this document.

Messrs. Gonzalez and Guerra: Same objection.

Document withdrawn by Mr. Kelley, counsel for the plaintiff.

Plaintiff offered certified copies of Regulations Nos. 3 and 5 of the Federal Alcohol Administration.

Received without objection and documents marked "Exhibit AF for the Plaintiff".

Mr. JOSE M. BOSCH was then called as a witness for the plaintiff and testified as follows:

Direct Examination by Mr. FERNANDEZ.

My name is Jose M. Bosch.

Stipulated that Mr. Sancho Bonet is a citizen of Puerto Rico and of the United States and resident of and domiciled in Puerto Rico.

I am vice-president of Bacardi Corporation of America, and agent for Cia. Ron Bacardi, S.A., in the United States, and vice-president of Cia. Ron Bacardi of Cuba.

Outside of marriage in the family I had no connection or relations with Cia. Ron Bacardi, S.A., before prohibition. I became connected with the Bacardi Corporation of Cuba around February, 1931, but for 8 years before that I had a connection with it. I was in charge of all of its finances but not in an official capacity. I was a sort of unofficial financial counsel.

I was born in Santiago, Cuba, where I have resided most of my life and I have known the Bacardi family ever since I can

recall and I know that in 1862 Mr. Facundo Bacardi started the business in his own name. When he died he was still in the rum producing business and the business was carried on by his sons, Emilio and Facundo, whom I knew. Pepin I never knew. They continued running this rum producing business under the name of Bacardi and formed a partnership of my own knowledge. The three sons of Facundo Bacardi continued this rum producing business under the name of Bacardi & Company. They made Bacardi rum in its different types. During prohibition Bacardi rum was sold outside of Cuba on steamships and in different countries all over the world. I myself sold some of it in Mexico.

Before prohibition Bacardi rum was sold in the United States. I have delivered rum from the office of Bacardi Company, or rather the New York office. They paid me once 50 cents for each gallon I delivered.

That rum was presented to the public with the Bacardi label, more or less practically the same label that they are using today. There was no other designation or trade-mark, only the bat. Those trade-marks and labels and the bat designation of the Bacardi name, were placed on every container of Bacardi rum sold. When prohibition was enacted the sales of Bacardi rum continued outside of the United States. To my own knowledge in Mexico, in Shanghai, in England, in Japan, in India, in the Philippine Islands, in France, in Spain, in Germany, in Russia, always under the marks and trade-name of Bacardi. Of course Bacardi rum during prohibition was sold in Cuba and on the steamers going all over the world, to the States and all over. Sales of Bacardi rum were made on the steamers plying between Cuba and the United States. Since the repeal of prohibition I was appointed agent for Cia. Ron Bacardi, S.A. of Cuba, in the United States and I have been acting in that capacity ever since. I am in charge of sales and advertising and sales promotion. Since that time Bacardi rum has been sold in the United States in every state except the dry states. This product has been presented to the public in the United States in bottles with the Bacardi label. In cases it has been sold through

Schenley and Schenley in turn has sold the various local distillers. None of this product has ever been sold without these trade-marks and bat design. The Bacardi trade-mark, labels and the bat design were affixed to every bottle of Bacardi rum sold in the United States.

During the first two years after repeal the advertising of Bacardi was made by Schenley, with money supplied by Bacardi and under my supervision. In other words, I had to pick out the medium, I had to approve the advertising and I had the general supervision. In the following two years I paid the advertising with money supplied by Bacardi and I picked out the medium, etc. and Schenley supervised my work. I say the first two years following repeal meaning 1934 and 1935, and 1936 and 1937 were the second two years. That system was followed in 1936 and 1937 and it is in effect today.

I was recently in New York, in my office, and I got the figures as to the amount of sales of Bacardi rum in the United States after prohibition. I sold all the Bacardi from Cuba sold in the United States to Schenley. In 1933, that is in the part from December 6, 1933, to the end of December, we sold to Schenley 15,400 cases of Bacardi; during the year 1934 I sold to Schenley 102,537 cases of Bacardi; during the year 1935 I sold to Schenley 111,625 cases; during the year 1936 I sold to Schenley 64,969 cases; during the year 1937 I sold to Schenley 87,000 cases. You see Schenley Products Company makes me a daily report of where they effect the sales of this Bacardi rum that I have sold to them and it is sold, they have sold it, all over the United States. Furthermore I have made trips, except in the dry states, among the wholesalers and state stores. I know that all of this Bacardi rum to the sales of which I have just referred, carried on it, on the containers, the Bacardi trade-marks and labels as shown by "Plaintiff's Exhibits C", "D", "E", "F", "G", "H" and "I", each of its corresponding class. For instance, the registration of Carta Blanca has been placed on the Carta Blanca rum and the registration of Carta de Oro on the Carta de Oro rum, but the bat has always been there on it. Every case bore the trade-mark or designation, the same thing.

Advertising of this Bacardi rum has been made in the United States. During the year 1934, I supervised the expenditure of \$37,643.90 in newspaper advertising. (I know of my own knowledge that Bacardi rum was advertised in the United States before prohibition) I have seen the ads in Life.

In magazines in the year 1934 we spent \$50,007.77 and in small Sunday advertisement \$392.50. These ads appeared in the Denver Post and the Hartford Courant, and the Journal of Wilmington, Delaware, the Chicago Herald, the Chicago Tribune, the Journal Transcript of Peoria, the Indianapolis Star, the Sioux City Tribune, the Louisville Courier, and the New Orleans Times-Picayune, the Baltimore Sun, the Boston Globe, the Boston Herald, Traveler, the Boston Post, the Boston Transcript, the Springfield Republican-News and Union, the Worcester, Massachusetts Post, the Detroit Free Press, and the Detroit News, the Minneapolis Tribune and St. Paul Dispatch, the St. Louis Globe Democrat, the St. Louis Post Dispatch, the Reno Gazette, the Newark News, the Newark Star Eagle, and the Trenton State Gazette.

The document that you show me is one of the Bacardi ads and it appeared in the Cosmopolitan in September, in Life, Time, Red Book, the New Yorker, and in various newspapers. You see, during the year 1934, in the magazines we advertised in Esquire, Fortune, in Harper's Bazar, in House & Garden, in Time and in many others. If you want to I can count them. Seventeen magazines in 1934. This advertisement appeared during the year 1934 and there were other advertisements similar to this appearing in those magazines in different shapes and different forms.

[This sample advertisement offered in evidence for plaintiff and received without objection as "Plaintiff's Exhibit U".]

I think there is a mistake. That is for 1935 and this other one here is for 1934. This first one was published in 1935 in the American Golfer in May; Fortune in May; Home and Field in May; House & Garden in May; Vanity Fair in May; and Vogue in May of 1934.

[The "other sample of advertising" published during the year 1934, received without objection marked "Exhibit AD for the Plaintiff".]

The Witness: This other one here is for the year 1937.

[Received in evidence without objection as "Plaintiff's Exhibit AG".]

Another form of advertising this Bacardi product in the United States was tip-ons. That was the type of advertising we used in 1936, and skirts for glasses. I had affixed to each one the number given away. This one we issued 126,000. This other is new, of 1937, we used 20,000. Of this other 1937 we used 100,000. Of this one we used 300,000.

[Documents received in evidence as "Plaintiff's Exhibits AH 1" to "4".]

The Witness: We used that type during 1936.

[Received in evidence without objection and marked "Plaintiff's Exhibit A-1".]

As to papers and magazines, where these advertisements were published and the amounts that were expended in that connection, I have only mentioned the year 1934. For the years 1935, 1936 and 1937 there were spent in newspapers as follows: In 1935, \$21,694.34, in magazines in that year \$48,199.73, and in small ads like tip-ons, and so forth, \$5,676.14. During 1936 in newspapers we spent \$18,346.88, and in magazines \$23,591.07. During 1937 there was spent \$48,185.21 and in magazines \$51,610.93.

In practically every one of these advertisements the Bacardi trade-marks and labels and the bat design were featured. There is one of course where the cocktail was advertised, and that was not shown and in all those in which the bottle did not appear the name of Bacardi certainly appeared.

The figures that I have given are only for the United States advertising. Advertising was done elsewhere but I cannot say about it of my knowledge because I have dedicated all of my time during the last four years to the United States. I have, however, seen it elsewhere. I have seen it in London where

they call it the "Cu'an Spirits". All of this advertising was paid for by Bacardi & Company. None of that money of which I have been speaking was spent by the Bacardi Corporation of America. In those figures we do not include the Bacardi Corporation of America. I mean that this money was spent by the Bacardi Company of Cuba.

The reputation of Bacardi rum in the United States, and wherever else I have been, is very good.

I have had experience in opening new markets for rum, in Mexico. As to how much money would be necessary to make a brand known and acceptable to the public, I would say that varies in each territory, but you could not possibly have a brand unless you spent \$2,000,000. We are spending today in Mexico a lot of money and we have not got what we ought to have. And that is in connection with the Bacardi trade-marks which before it went to Mexico was already known the world over.

With reference to the figures and the amount of sales of rum Bacardi in the United States made by Cia. Ron Bacardi, S.A. of Cuba, to Schenley, or through Schenley, which I gave yesterday, the liquor is not really sold until it is actually drunk, but we can go and examine wholesalers and retailers and see how much liquor they have sold. I have examined Schenley's books and I have seen this, that while in 1933 we sold Schenley 15,400 cases of rum, Schenley sold 15,550 cases because of the fact that they got a loan from a wholesaler of 150 cases which they repaid the following month. In 1934 we sold to Schenley 102,537 cases but Schenley only sold 81,886 so that they had an inventory at the end of the year of 20,000 cases. In 1935 I sold to Schenley 111,625 cases but Schenley only sold 91,618, so at the end of 1935 Schenley had an inventory of 40,000 cases unsold. The reason for that is that when repeal came around everybody that was in the liquor business in the United States wanted distribution of Bacardi because the idea had been that the only thing that the American individual was going to do was to buy liquor. The actual fact was different. They did not buy as everybody pre-

sumed and that was the situation that had to be corrected, so in 1936 we sold to Schenley 64,969 cases but Schenley sold 89,392 to absorb part of the inventory which they had. In 1937 we sold to Schenley 87,000 but Schenley sold 92,774 so that reduced Schenley's inventory of Bacardi to about 8,000 cases which is a normal inventory, and in that way you will see that although in 1934 Schenley sold 81,886 cases of Bacardi, in 1937 Schenley sold 92,774 showing an increase of nearly 11,000 cases.

When I say "we sold to Schenley", I mean that I sold as agent for the Cuban company.

During the year 1934 we advertised in 55 newspapers in the United States and 17 magazines; in the year 1935 in 48 newspapers and 24 magazines; in the year 1936 in 40 newspapers and 6 magazines; during 1937 in 48 newspapers and 20 magazines. I have had occasion from time to time to visit retail liquor stores in the United States. I have been in Miami, Jacksonville, Florida, New York, Saratoga, Boston, Los Angeles, Chicago, San Francisco, Detroit, Philadelphia pretty nearly in every wet state, at different times, ever since repeal. Bacardi has a wonderful distribution. I have yet to find a place that hasn't got Bacardi. These bottles of Bacardi that I sold in all the different establishments in the United States, bear all the different Bacardi labels and trademarks. In some of those establishments this product was displayed prominently, in others, not.

In addition to these large amounts which I have stated that the Campania Ron Bacardi, S.A. of Cuba, has expended in advertising its products, other activities have also taken place on behalf of this company to present the product to the public and make it well known. I, as agent of the company, maintain an office in New York and have a staff of employees, and during 1934 we spent about \$4,000 a month in that office; in 1935, we spent \$5,000 a month. During 1936 and 1937 we spent between \$6,000 and \$7,000 a month. Those men, and myself, we call on the restaurants and hotels, package stores, and do promotion work; that is, to offer them tip-ons and table tents and in every way to pro-

mote the sale of Bacardi. Get a good display in their windows or on their shelves and visit all over the United States. Furthermore I designed a portable bar which is a little suitcase and which has a bottle of Bacardi and a cocktail shaker and lime and sugar and ice, and those employees go around teaching them how to mix Bacardi cocktails and other cocktails.

As agent for the Cuban company, Campania Ron Bacardi, S.A. of Cuba, we have always maintained a bar in New York with the exception of during these last five months, because of the fact that we moved and we had to build a new one which has just been finished today. Every afternoon we get a distinguished person and give a cocktail party to 20 or 30 persons to let them judge the quality of our products, and thereby learn to like it. We have been doing that for the last four or five years, ever since 1934. We do the same in Havana. That bar is open from five until 7.30.

The Bacardi Corporation of America has sent to me to my New York office, \$17,500 to be spent in advertising and promotion of their product. I have only spent out of that \$1700 which I have spent in sending out circulars and telegrams to the trade. We have also spent \$1524 in giving away samples, and I contracted, just before I left New York, for 100 window displays at \$10 apiece, for the promotion of the sale of Bacardi from Puerto Rico. The rest of the money will be spent as necessary. This money was sent to me by the Bacardi Corporation of America for the promotion of the sales of Bacardi from Puerto Rico and it is in that promotion that I have spent this amount of money last referred to.

I arrived in Puerto Rico around the 22nd of February 1936. I came to study the possibilities of establishing a plant for the production of Bacardi rum here in the Island. I visited the Governor of Puerto Rico, the Treasurer, the Secretary of Agriculture, practically all the high officials of the Government. I informed them of what I proposed to do in Puerto Rico and I certainly received a very enthusiastic welcome. The object of my visiting these

officials of the Government, including the Treasurer, was to study the possibilities and to find out if the Governor of Puerto Rico was desirous of having us establish a plant here.

I was assured by the Governor—

Mr. Sifre: Objected to, may it please the court.

The Court: Yes, I sustain that.

[After discussion.]

The Court: If there is any subsequent development in the testimony which would justify me in allowing this testimony, I will do so, but at present I do not see it.

[Exception by plaintiff.]

The Witness: The first thing that was necessary in order to locate in Puerto Rico was to find out if there was an appropriate building in which to locate. That building was found with the cooperation of the Federal Government. We leased that building after it was examined by the Treasury Department and declared to be fit for the installation of a rum plant. We also took an option to buy. We occupied that building. [That is the same building to which reference is made in Plaintiff's Exhibits X and Y.] I mean this Marina Building. Then after we occupied the building we asked Cuba to send us that equipment from Cuba. That was absolutely necessary for the production of good rum and we also bought in the United States and also brought from the plant we had in Philadelphia, that other equipment which had already been purchased. It is exactly the same as the Cuban one.

Part of this equipment was brought from the plant in Santiago, Cuba of Bacardi & Company, and part of it was brought from the plant of Bacardi Corporation of America in Philadelphia, and although it had never been operated some equipment had been bought from different manufacturers in the United States in accordance with the instructions as to the equipment from the Cuban company. I asked Cuba what type of equipment we should require to make here a duplicate of the Cuban plant and they gave me a list which I already knew in a way because of my

familiarity with the Cuban plant and that equipment was purchased. That is, that part of the equipment that did not refer to the actual production of rum. The actual production of rum, or rather the actual preparation of rum, is equipment that came from Cuba.

You cannot make a rum exactly like Bacardi unless the equipment is exactly like the Cuban plant because of the fact that much of that equipment requires the preparation of time and a great deal of time. We have some equipment there that is forty years old and that could only be bought from the Cuban company, if exactly the same type and quality of rum is going to be made.

As I have said, the Compania Ron Bacardi, S.A. of Cuba, sent technicians here with me to supervise the purchase of this material. I brought with me at the time of the first installation of the Bacardi plant, at the time we were just going to install the Bacardi plant in San Juan, a young man that is in charge of our plant in Cuba where he makes Bacardi rum, and he is in charge of our plant. He came with me. Immediately after that they sent me from Cuba their own master distiller. They sent me three men, experts in the preparation of Bacardi rum which they had brought out from the Cuba plant and they sent me a man expert in the bottling of rum and the general run of the plant. These men saw to it that the rum prepared here was exactly the same rum prepared in Cuba.

The master distiller is fifty-six, fifty-five or fifty-six years old and he has been with the Compania Bacardi of Cuba since he was eleven. One of the men that came from Cuba for the manufacture of rum is 44 and he has been 30 years with the company. Another man who actually does the production of rum, the manufacture of rum, I knew him in charge of the plant that Bacardi had in New York in 1918, and he was in charge of that plant. And he was an expert then. He had already been with the Bacardi Company of Cuba at least 15 years. The other man who is in charge of bottling, has been with the company of Cuba only eleven years. They have been making rum continuously. Bacardi rum,

continuously throughout their work with the company, with the exception of the boy in charge of the bottling, which is the type of work he has always done.

In connection with the purchasing or obtaining of distillate for the manufacture of Bacardi rum in Puerto Rico, it was necessary to find out in the first place if Bacardi rum could be produced in Puerto Rico. To find that out the company leased a distillery in Pennsylvania and there distilled Puerto Rican molasses and it was left to age, and it was found that the product was satisfactory. When we came here we leased a distillery and we sent samples of molasses and water to Cuba, and Cuba was satisfied with that and sent us the master distiller and his assistant to start the production or distillation of rum here in the Island. When I say Cuba, I mean the *Compania Ron Bacardi of Cuba*. Ever since, and periodically we send to *Compania Ron Bacardi of Cuba*, samples of molasses, samples of the distillate so obtained, samples of the water. They have been approved by *Compania Ron Bacardi of Cuba*. Some additions or repairs were necessary to this distillery that I have mentioned in order to obtain distillate that could bring a product of the same quality as the Bacardi rum manufactured by *Compania Ron Bacardi, S.A. of Cuba*. The master distiller when he came here found that he had to make a number of changes in the distillery and the cost was between \$8,000 and \$9,000, of which the owner of the distillery paid half and the Bacardi Corporation of America paid the other half. I purchased the necessary parts or equipment that was necessary for both repairs or additions to the distillery, with the advice of the master distiller. When I say I, I mean I, personally, acting for Bacardi Corporation of America, with the advice and assistance of the master distiller, the technician from Cuba.

Before May 15, 1936, the Bacardi Corporation of America had spent or obligated itself by debt, for \$44,290.42 here in Puerto Rico. Up to July 30, 1937, Bacardi Corporation of America had spent \$603,898.16. All of the money was spent in erecting its plant and purchasing equipment for the plant and for general ex-

penses and all inherent things, that are inherent to the business such as telephone, a little advertising; we bought a piece of land the other side of the Bay to build a distillery for which we spent \$16,679.38. We have purchased equipment which we have either here or in the hands of the manufacturer, built boats, docks.

The technicians that were sent by Compania Ron Bacardi, S.A. of Cuba, to supervise and inspect the plant have been here continuously ever since and are still here. Whenever one of them goes on a vacation somebody is sent from Compania Ron Bacardi of Cuba, to take this place.

These photographs that you now show me are photographs of the plant of Bacardi Corporation of America in San Juan. This is the front of it, this is a picture of the fourth floor, this is a picture of the fourth floor, and this is a picture of the second floor. There are four photographs.

Mr. Fernandez: These photographs were attached to the complaint as exhibits, but we want to put them in evidence.

[Photographs received without objection, marked "Exhibits AJ 1 to 4 for the Plaintiff".]

The Witness: The Bacardi Corporation of America has manufactured rum in Puerto Rico. I, acting as an officer of Bacardi Corporation of America, purchased the materials, with the advice and consent of the technicians sent by Bacardi of Cuba. All of these materials are subjected to the supervision and approval by the technician from the Ron Bacardi of Cuba. Absolutely so.

We started to distill in July. I think it was in July of 1936. The Bacardi Corporation of America made its first rum, finished product, in January of 1937. The technicians that have been sent by Compania Ron Bacardi, S.A. of Cuba, manufactured this rum in our plant. Samples of these materials and of the product are periodically sent to Cuba, to the Bacardi Company of Cuba, for the purpose of getting their approval and their comparison with the product made in Cuba. In every way we have always had their approval. I have given these technicians instructions in my capacity with the Cuban company, that the rum made here has to

be exactly the same as the rum made in Cuba. I am sure that the rum produced by our plant in Puerto Rico is made under the same process as the rum produced in Cuba by the Compania Ron Bacardi S.A. of Cuba.

This is a secret process. Bacardi rum has been tried to be imitated, but I don't know of anyone that has been able to do it yet.

Four people know the process. It is only transmitted to the male members of the Bacardi family, and it is only transmitted to them when they have been working with the company many years and their worth has been proven.

The Court: Let us take the case of a person who works in the plant, makes the rum. I am not asking you what your secret formula is, but what is to prevent that person from learning the actual operation, what the process is? A. Because the process is divided into three or four stages and no one man sees the three or four stages, no one man is transferred from one to another state. You see our distillers are always separated from the rum plant so that the distillers cannot get together with the rum manufacturer and talk about what they do. We have never had any difficulty.

We now have a stock of 37,000 gallons of finished rum in our plant and we have over 200,000 gallons of unfinished high proof. About 340,000 gallons of the finished product will come out of those 200,000 gallons of high proof product that we have.

After the preliminary injunction was granted in this case we continued to acquire stock of the distillate because of the fact that the equipment if it gets dry, spoils, and what rum you take out you have to put in if you are going to maintain your equipment and not going to have an irreparable loss.

The situation there in regard to the stock on hand of the finished product and of the product under process, is exactly the same as when the preliminary injunction was granted. There might be a little variation of 1,000 gallons, but mechanically it is the same.

Since the granting of the preliminary injunction we have made sales of our finished products. We have sold to Schenley during the months of November and December about 21,000, or 22,000

or 23,000 cases of rum and they have received a great deal of rum from us that is not actually in the market; yes, because due to the uncertainty we have not dared to put the rum all over the United States. So we had to build a stock in New York before we can do that, and that we have been doing, but they have already merchandise unsold about 22,000 cases. We have shipped this rum to the United States under a label approved by the Federal Alcohol Administration and not in conflict with the Insular Law, after the preliminary injunction was granted. These two, I refer to Exhibits N-1 and N-2, these are the labels we use on the product that we have shipped to the United States after the preliminary injunction was granted. Exactly.

We have a verbal contract with Schenley to buy from us 10,000 cases of rum every month. We have been living up to it and they have lived up to it with a little more. They bought two or three thousand cases more than they had to buy during the last two months. We are ready to continue shipping under this agreement. Yes, it is on the basis that we can use the Bacardi trademark and labels with the natural variations of the color of the label, and what we usually call the analysis label, which is the bottom label. We call that the analysis label because in olden times the Bacardi Company had a certificate there from the Municipal Laboratory of Madrid, Spain, that it was pure.

We have been making a profit in the sale of this rum that we have been shipping to the United States under these labels. We have been making our statement of December 31st which will show that in November we made \$50,000 and in December more or less the same amount.

As to the capacity of our plant you have to divide that in three sections. The distillery is producing today enough rum for about 16,000 or 17,000 cases per month. The plant where the rum is produced, if it worked night and day could produce more or less that same amount, but the bottling plant has a capacity of 10,000 cases per month.

As to how long it would take to double the capacity of the

whole plant, in the first place we have all the equipment practically all the equipment, purchased for a distillery; I mean for setting up our own distillery and thereby increasing the capacity because we would keep the present one also. I should say that that distillery could be ready to produce in about five or six months, but the rum plant could be brought to 17,000 or 18,000 cases per month in the course of the next 45 or 50 days. Since the bottling capacity of our plant now is less than the production capacity we have some rum on hand which we would be able to ship in bulk if we wanted to.

If we were not permitted to use the Bacardi trade-mark and labels on our product it would mean a disaster to our business. If the business was liquidated those \$603,000 that we have spent here, I doubt very much if they could bring \$200,000. Speaking as a man who has been for a considerable time engaged in the rum producing business and from the profits that we have already obtained from this business in Puerto Rico, the replacement value of this plant I believe would not be much less than we have spent which is \$602,000. As a going concern it is extremely profitable. I stated a minute ago that we have earned \$50,000 in each of the last two months, and I do not expect to see it go so smoothly because it requires a great deal of work, but this plant here should easily earn \$400,000 or \$450,000 a year, and you would have to deduct from that what has to be paid to the Bacardi Company as royalty, but as a going concern it is invaluable if you can use the trade-marks. If you cannot use the Bacardi name it is not worth much. I have been present, not so many years ago, when for the use of the brands and trade-marks Bacardi of Cuba was offered \$5,000,000; for the system of production. I mean someone was buying and it was declined.

From my experience in this business I think that the salvage value of this plant of ours would be about \$200,000 or \$250,000, so that if we are not permitted to use the Bacardi trade-marks and labels on our product we would lose about \$350,000 to \$400,000 on our investment here.

As to what would be the effect from the sale of our product, having to sell this product under another trade-mark, unknown trade-mark and not the Bacardi trade-mark and labels, this product made in Puerto Rico is sold to the retailers, to the hotels in New York today, I mean the product that we are now manufacturing under the Bacardi trade-mark, and I mention New York because New York is the state with the highest state tax; it is being sold to the hotels and restaurants for \$18.25 per case, with all taxes paid. I know of rum being sold in hotels and restaurants in New York for \$11.85. That is if you could get a market. As to how much it would cost to make this new market to open a market for those new brands, in the first place the difference in price, the amount of work you have to put in and money you have to spend to create a new market, must be considered, and you could not expect to sell more than five or six or seven or eight hundred or a thousand cases a month for many years. If we could not sell that product, I mean the whole production of our plant, the effect on that plant would be that it would have to be liquidated and take a loss. Close up and let more of the employees out.

The amount of expense of advertisement and promotion with these other trade-marks that we would have to use if not allowed to use the Bacardi trade-marks would be very large. I testified yesterday about that. I do not think it would be less than \$2,000,000 to build up a real trade-mark.

Mr. Fernandez: We want to make a motion for the correction of an error in the record. When we referred to one of the amendments yesterday, it was our intention to refer to page 18, line 8, which was in connection with adding the words "Commerce Clauses, articles so and so of the Constitution", and we misstated the page and line, the reporter took down page 8, line 7. It should be page 18, line 8.

The Witness: After we started or were in the process of installing our plant under Law 38 of 1935, I applied to the Treasurer of Puerto Rico to send an inspector to decide whether the build-

ing was in a condition to install a rum plant. He sent the inspector and the building was approved. I submitted then to the Treasurer of Puerto Rico the plans of the plant and applied for a permit. I was told that the permit was not granted until the plant was finished, that that was the customary practice here. I refer to the letter of March 31, 1936, marked "Exhibit Z for Plaintiff".

Mr. Fernandez: Mr. Bosch, as a man of experience in the rum producing business and in the production of distilled spirits and in handling the exportation and sale of these spirits, do you believe there is any reason for the measure contained in Section 44(b) of Law No. 49 of 1937 in regard to shipments in bulk?

Mr. Sifre: Objected to on the ground that Mr. Bosch while he has stated that he has been in the rum business for some time and has been agent for the Cuban company in the United States, and so forth, I do not think that he has been qualified so well as an expert in connection with what our Legislature deems necessary measures in connection with the regulation of the rum industry in Puerto Rico.

The Court: I do not think it is a matter for opinion. He may state what the effect of that would be and how it would affect his business, but it is not a matter of expert opinion at all. He may state the facts, what the effect of it is.

[Exception by the plaintiff.]

The Witness: As to the custom of the liquor business in shipping liquor—rum is sold, all liquors are sold, either packed in small packages or sold to other manufacturers in barrels. There is speculation in rum in warehouses, in which an individual can buy a certificate of a barrel of rum, provided that the fellow that sells it takes the obligation to bottle it. That is a common procedure. We sell rum in bottles and we have sold rum in barrels.

The usual containers of liquor used throughout the world are: in bottles of 1.6 ounce, 8-ounce, 12 4/5-ounce, 4/5-quart, quart, (in Europe it is litres), gallon, and amongst the trade 50-gallon barrels, and amongst the rum trade rum puncheons, 130-gallon

barrels. Indistinctly, rum is either sold amongst the trade in either 50-gallon barrels or 130-gallon barrels.

We have not made any shipments of rum in bulk since the preliminary injunction was granted. This is because at the time of the preliminary injunction I had, on my desk, an inquiry for 100,000 gallons of rum in bulk, if we took the obligation to provide that same amount for a certain number of years, and we declined it because of the Puerto Rican law, the outcome of which we do not know.

The House of Heublein, of Hartford, Conn., which bottles the Club Cocktails, have been trying to get us to sell rum in bulk for the production and sale of their cocktails with rum. They have been buying rum in bulk in Puerto Rico all these last few months until they had to discontinue because of the variation in quality.

I mean that they bought rum in bulk before this law, and also while this law is in effect. They bought from the National Liquor Company. While we were here in court in the preliminary injunction, ten barrels of rum had been shipped that day. They cannot buy rum in bottles because it would make the cocktails too expensive. They have to buy in bulk. The Club Cocktail is a famous cocktail. It is a famous brand. It sells a great deal. That would be a very desirable outlet for us, and they are perfectly willing to buy from us but we cannot sell them. It would be a desirable business for the sale of our rum in bulk now, yes, exactly. And right now we have the capacity to sell it and we have the stock.

The Court: Why don't you sell it? You have a preliminary injunction. A. Because to present this cocktail, well, it requires a great number of cases. It requires advertising, it requires promotion work, and giving away samples. We cannot do that over a period so short. We can only do that if we know we can continue doing it, because it is an investment and not an investment of a mere \$1,000.

The Court: Then in that respect the preliminary injunction was

of no value to you. A. In that respect the preliminary injunction was of no value to us.

In spite of the preliminary injunction in regard to Section 44(b) we have been actually losing money because we have not been able to send the merchandise to the United States in bulk. We are still losing profit because of that situation.

The minute we can go and ship rum in bulk and send it to manufacturers of cocktails in the States there are three or four who are in that business and who would be very happy to buy from us and we would be happy to sell to them, but it is a business that we cannot develop at the present time. We have made samples for Heublein, and it is a nice thing, but we cannot afford to put the money into it unless we know that we can continue. I mean that we have already made experiments with the use of the rum that we are producing in Puerto Rico, in cocktails. It is a very good cocktail. The reason that I say that we should not ship this rum in bulk to the States is because it would require giving away samples, putting it in every advertisement of Heubleins, getting the distribution, showing the people that it is good and all that work would take a considerable amount of money. Now it would not be worth while to do that unless you would be assured that you could continue in the business for a long time. That situation is true even though we are losing profit now. The loss of profit is less than the amount of money that would be required to be spent to promote the business properly.

As to whether it is usual to ship distilled spirits or rum in one-gallon containers, we have sold rum in one-gallon containers but that is for the consumption of the public. It would be impossible to sell rum in one-gallon containers for industrial purposes, like making bottled cocktails, because of the high price that that would entail. One one-gallon container costs delivered here in Puerto Rico, 73 cents. The crate in which you will have to pack it, for three, would be 18 cents. You pack three in a case. That would be 79 cents and the bottling would cost practically as much to bottle one gallon as its costs you to bottle a 50-gallon tank, so it would be, you see, 50 gallons on that basis will surely cost

\$50, while a barrel costs \$6. These containers to which I am referring, are glass containers covered with straw, because it would be required to do that for the protection of the glass. You could not use any other kind of container, say a tin container, you could not put rum in cans. As to the reason for that—I am making an experiment with the same type of can used for beer. I have rum over here that has been in a can a year and a half. So far it has not deteriorated here, but I have the same experiment in New York and it seems that the variation in temperature, the liquor has been spoiled.

As to one-gallon containers of wood—that is impossible. That would cost you—we sell a one-gallon wooden container for \$9, so fifty of them would be \$450. Those are not very fancy ones. Those that have the face carved cost \$15 or \$16. I mean the others with the plain face, and the name "Bacardi" on the back. The smallest wooden container used in the trade is 50 gallons. As to whether other smaller containers are used sometimes—you might give away, or you might buy a one-gallon container, but that is just for personal use. It is not for the trade. It cannot be profitable to ship any of this merchandise in bulk in one-gallon containers—not if you make the container of wood, because it costs you the sum of \$450 for fifty gallons, and if glass, \$50, against the barrel which costs \$6 only.

We did not bottle any rum when Law 115 was in force. We did distill. The Bacardi Corporation of America did have a distilling permit from the Treasurer of Puerto Rico until it gave it up. I do not know the exact date we gave it up but it must have been about May of 1937. We operated the distillery up to that time, from the time we got the permit until the time we returned it. We had two permits: one for a distillery and one for warehousing, rectifying and bottling. Since we gave up the distilling permit we made a deal with Mr. del Valle to buy the distillate from him on the basis that we buy all the prime materials to be sure that they are up to the standard quality, and all the men that operate the distillery are paid by us and he only looks after the

commercial end of the business. He sees that we do not put in too many materials and do not take less rum than we should. A man designated by Campania Ron Bacardi, of Cuba, whom we pay, supervises the distillery here. I buy the materials, when I said I sent samples of molasses, etc., to Ron Bacardi of Cuba, I referred to this distilling also in Mr. del Valle's plant. Yes, exactly.

[Witness excused subject to recall for cross-examination.]

Mr. Fernandez: We want to present in evidence annual report of the Commissioner of Labor of Puerto Rico to the Governor of Puerto Rico containing official statistics on page 76 showing the number of laborers or employees employed in the rum producing industry in Puerto Rico, or in the liquor business. 549.

Mr. Sifre: May I ask counsel what is the purpose of this evidence?

Mr. Fernandez: The purpose of the evidence is to show that the liquor industry is not of public interest or concern because at the hearing of the preliminary injunction and in connection with that memorial addressed to the Legislature, the statement was made that about 1500 persons were employed in this industry and that if Bacardi Corporation of America was allowed to come in the other liquor producers would have to go out of business, and these 1500 employees would lose their employment.

The Court: I don't see what this has to do with this case.

Mr. Fernandez: Your Honor, they are endeavoring to justify this discriminatory legislation on the ground that it touches the public interest and that this industry is affected with the public interest.

The Court: When the defendant or intervenors go into that question it may become pertinent in reply, but not in chief.

Mr. Sifre: May I clear up a statement which I have made in the record? The liquor industry is affected with the public interest all over the United States to the extent that it may be subjected to regulation. It is in that respect an industry subject to governmental regulation. I just wanted to clear that up.

[Plaintiff offered in evidence certificate issued by the Treasurer of Puerto Rico dated January 18, 1938, showing importations of a number of cases of ron dominicano, Carta Blanca Brugal & Company, Puerto Plata, Republica Dominicana, bearing gold medals and the word "Brugal", and again gold medals. This importation appears to have been made of May 3, 1934.]

Mr. Sifre: May I know for what purpose this document is offered in evidence?

Mr. Fernandez: It is alleged in our complaint that this legislation has been directed against this plaintiff alone. This objection came up when the hearing was being held for the preliminary injunction and we explained the matter to your Honor and your Honor admitted the evidence, to show that Brugal & Company, a Dominican concern with trade-mark, trade-name and label known out of Puerto Rico, was producing Brugal rum in Puerto Rico before February 1, 1936, and was permitted to continue using that label and producing that rum under a label known out of Puerto Rico, in spite of the legislation which we are now attacking in this injunction.

The Court: In other words, I understand—I do not recall definitely, that the Act which you challenge here does have a proviso to the effect that any company that was producing or exporting rum with a foreign label prior to a certain date would not be included within the inhibitions of this Act?

Mr. Fernandez: Yes, sir.

Mr. Sifre: I have no objection.

The Court: Yes, I am going to admit it, not because it shows what is intended but it does throw some light on the question as to the protection of local industry, which is probably a collateral issue in this case. I am going to admit it.

[Document marked "Exhibit AK for the Plaintiff".]

Plaintiff offered in evidence and it was received without objection, a certificate issued by the Treasurer of Puerto Rico on January

18, 1938, showing the labels, trade-marks, which Compania Ron Brugal, S.A. is using on its rum manufactured in Puerto Rico. Using it now.

[Document marked "Exhibit AL for the Plaintiff".]

Certificate issued by the Treasurer of Puerto Rico on January 18, 1938, showing the labels which are being used by the National Liquor Company, Inc., of Hato Rey, Rio Piedras, Puerto Rico, on its rum, and other distilled spirits, manufactured in Puerto Rico, and the labels are attached to this certificate and to the former certificate. This is another one of the companies that were doing business before February 1st, before the law was passed. They have continued to use this label.

[Received without objection, document marked "Exhibit AM for the Plaintiff".]

Another certificate issued by the Treasurer on the same date, January, 1938, showing the distillers and rectifiers that were licensed by said department on or before February 1, 1936.

[Received without objection marked "Exhibit AN for the Plaintiff".]

Another certificate issued by the Treasurer of Puerto Rico on January 18, 1938, showing the persons and entities appearing as licensed manufacturers of distilled spirits or alcoholic beverages after February 1, 1936.

[Received without objection marked "Exhibit AO for the Plaintiff".]

Mr. Fernandez: Referring to Plaintiff's Exhibit AO above. Now there is a little ambiguity in the form of the certificate. We asked the Treasurer to give us the names of all the persons and entities that had received licenses after February 1, 1936, and although the certificate was apparently issued to that effect it is not clear as to that point, and we want to make it clear for the record, with the consent of the defendants and intervenors that this certificate is for the purpose of showing the persons and entities who has been licensed by the Treasurer of Puerto Rico since February 1, 1936.

Mr. Sifre: No objection.

Mr. Gonzalez: No objection.

Another certificate of the Treasurer of Puerto Rico issued on January 18, 1938, showing the labels which are attached to the certificate that are being used by the Compania Ron Carioca Distilling Co., of San Juan, Puerto Rico, in their product manufactured in Puerto Rico.

[Received without objection marked "Exhibit AP for the Plaintiff".]

Mr. Fernandez: We have presented in evidence your Honor, two new approvals of labels for the Bacardi Corporation of America by the Federal Alcohol Administration, and these documents which were marked "Exhibits N-1 and N-2 for the Plaintiff" should, according to the Rules of the Department, not be out of the possession of the plaintiff. We move, your Honor, to permit us to replace them with photostatic copies to which will be attached identical replicas of the labels.

[No objections by defendants or intervenors.]

Mr. Sifre: Referring to Exhibits N-1 and N-2 for the Plaintiff. May I ask if these are the labels that are being used now?

Mr. Fernandez: Yes, exactly the same.

Mr. Sifre: For your Puerto Rican product?

Mr. Fernandez: Yes, sir. Of course, Mr. Sifre, although one says "distilled and bottled by" and the other says "prepared and bottled by".

Mr. Sifre: I just had in mind that bat on the left side of the label. You are using that now on rum from Puerto Rico?

Mr. Fernandez: Yes, we are.

[After noon recess, Jose M. Bosch, recalled for further direct examination.]

The Witness: The license and agreement between Cia. Bacardi S.A. and the Bacardi Corporation of America, Plaintiff's Exhibit V and also the document marked here "Plaintiff's Exhibit W", the amendment to the agreement, are still in force. That is, the agree-

ment as thus amended is in force. We have been operating under that agreement since it went into effect.

[Plaintiff offered in evidence a certified copy of the Minutes of a meeting of Cia. Ron Bacardi, S.A., of Santiago, Cuba, duly certified by the Secretary of Cia. Ron Bacardi, S.A., and authenticated by the American Consul at Santiago, Cuba, on August 4, 1937, ratifying this license and agreement between the two companies.]

The Court: Has the contract been challenged?

Mr. Fernandez: It is only to show ratification by both companies of the contract.

The Court: You have the contract itself in evidence signed by both parties?

Mr. Fernandez: Except that the contract itself calls for a ratification.

The Court: Oh, it calls for a ratification.

Mr. Sifre: It refers to this amendment of December 13, 1935.

Mr. Fernandez: No, the one I present refers to the original contract.

Mr. Sifre: May it please the court, inasmuch as I objected to the admission of the original contract between the American company and the Cuban company, and I also objected to the admission in evidence of the amendment to that contract, I want to make the same objection to this resolution. In other words that they are incompetent, immaterial and irrelevant.

The Court: You do not raise the question as to whether they have been properly identified?

Mr. Sifre: Oh, no.

The Court: Objection overruled.

Mr. Sifre: Exception, your Honor.

Mr. Guerra: We make the same objection, your Honor.

Mr. Gonzalez: Same objection for the Government.

[The document was marked "Exhibit AQ for the Plaintiff".]

Mr. Fernandez: Now the ratification of the agreement by the

Pennsylvania corporation is attached to the certified copy of the agreement that we presented originally. We now present certificate issued by the Secretary of the Compania Ron Bacardi, S.A. of Santiago, Cuba, authenticated by the United States Consul at Santiago de Cuba, on December 21, 1937, ratifying the amendment to the agreement.

The Court: The same objections, and the same overrulings and exceptions allowed.

[Document marked "Exhibit AR for the Plaintiff".]

Plaintiff offered in evidence a certified copy of the Resolution of the Board of Directors of Bacardi Corporation of America, certified by the Secretary of the corporation and authenticated by the Proto-Notary of the Court of Common Pleas of Philadelphia County.

The Court: The same objections, and the same overrulings and exceptions allowed.

[Document marked "Exhibit AS for the Plaintiff".]

The Witness: I know that during prohibition Brugal rum was produced in Santo Domingo. After prohibition I have bought a bottle or two of Brugal rum in the States produced here in Puerto Rico. Now, that is before I came here. Before February 1, 1936, of course. After February 1, 1936, I have, of course, seen Brugal rum in every store, or in many stores, in the United States, and I have seen it bottled here, in Puerto Rico. Yes, I have seen it bottled here because they were our neighbors.

The Court: What relevancy does that have to the issue we are trying?

Mr. Fernandez: It shows, your Honor, that out of three companies that had located in Puerto Rico before February 1, 1936, two were allowed and have been allowed to use, and are now using, trade-marks.

The Court: You have already brought that out and I have allowed you to do that because it was pertinent.

Mr. Isaacs: This, your Honor, is pertinent for the purpose of

putting into evidence the trade-marks used prior to February 1, 1936. The labels are in evidence, but there is no proof of use.

The Court: From that view of it I will let it in, to show that the label or trade-mark was used.

The Witness: I bought this bottle which you now show me here in town just two or three days before the preliminary injunction, with the label appearing on it, bearing the name of "Brugal" and also the legend "Brugal Rum, Puerto Rican Rum". I was not in Puerto Rico before February 1, 1936, but I have seen them [referring to labels like these or similar to this of Brugal rum, on rum] in the United States. Of course it did not have, at least so prominent, the phrase "Puerto Rican Rum". It had the mark "Brugal". The label is the same or very similar to the one used in Santo Domingo.

[Label offered and admitted in evidence and marked "Exhibit AT for the Plaintiff".]

In 1933 this Daiquiri Coctelera rum started to be produced in Cuba. It had this label, same colors, same name, word for word. The only difference it has is that here it says that this one is distilled and bottled by National Liquor Company, Inc. of Hato Rey, Puerto Rico. The rest is exactly the same. I do not know whether this label was used by the Compania Ron Daiquiri S.A. or National Liquor Company, before February 1, 1936. I know it has been used after February 1, 1936, and I know that before February 1, 1936, that label was in use in Cuba, I mean in the United States. They have used it after February 1, 1936 on rum manufactured in Puerto Rico.

Mr. Sifre: You say that this rum is made in Puerto Rico. A. I have seen rum with a label similar to that.

Mr. Sifre: The question is if you know whether the rum in bottle seen by you was made in Puerto Rico? A. I do not know if it was made in Puerto Rico because I did not see the rum produced. I did not see the rum bottled.

The Witness: I have seen that rum at 247 Park Avenue, New York, in a liquor store, and it had there the name National Liquor

Company. It bore this legend of the National Liquor Company of Hato Rey, Puerto Rico. Yes, distilled and bottled by National Liquor Company, Inc. of Hato Rey, Puerto Rico.

[Label offered and admitted in evidence marked "Exhibit AU for the Plaintiff".]

I recognize the bottle bearing the label of Rum Carioca, distilled by American Distilling Company, Gretna, La. which you now show me. This particular bottle I bought in a liquor store in University Place between 9th and 10th Streets, back in 1936, when I was living in the Hotel Lafayette in New York. I have seen this label used for rum or a similar label bearing the name Rum Carioca, before February 1, 1936. I have purchased at various times, for experiments to examine the quality of the rum in the year 1935, when they first started to produce that rum. The bottles had a similar label. I saw that in New York. Yes, in the United States, but not elsewhere, not as I recall.

[Label offered and admitted in evidenced marked "Exhibit AV for the Plaintiff", without objection.]

Referring to Plaintiff's Exhibit AP I have seen that label used in Puerto Rico after February 1, 1936. This one has been sold in Miami. I have seen it in liquor stores in Miami. Yes, it says that "Puerto Rican Rum".

I do not know of any regulations by the Treasurer of Puerto Rico under the liquor laws of Puerto Rico or under the beverages Act. I inquired in the Treasury Department. The result of my inquiry was that they had none at the time. I have not inquired in the last two or three months. I have been away. At the time they did not have any and none have been sent to my office.

[Witness excused subject to recall for cross-examination.]

Cross Examination by Mr. JAIME SIFRE, JR., on behalf of
DESTILERIA SERRALLES.

The Bacardi family started to produce rum in Cuba in 1862. In Santiago, Cuba. One of the plants has been there all the time but they have other plants in Mexico, France, Spain and in New

York before prohibition. The plant in Puerto Rico is owned by Bacardi Corporation of America. Under their own name they have no plant in Puerto Rico. Only four persons know the secret formula for the production of Bacardi. One of them is in Puerto Rico. I am not that one. That person is a natural person. No one else except those four know the secret formula. As far as I know no one else in the world knows this secret formula because that rum has been tried to be duplicated and it never has.

I testified this morning that the Bacardi Corporation had sent to me \$17,500 to devote to the advertising of Bacardi made in Puerto Rico. The money sent by the Cuban company has been spent for the advertising of Bacardi rum. Ever since 1937 we do not indicate where Bacardi rum is made because of the fact that we expect to advertise the rum from Puerto Rico, so now we advertise only Bacardi rum. Bacardi was well known throughout the world prior to the time when we thought to begin to advertise the Puerto Rico Bacardi. Before I came to Puerto Rico Bacardi meant in the trade the finest rum made, and it referred to Bacardi rum made in different localities. Made in Cuba. And for instance if you go to Mexico and ask a Mexican, he will tell you the Bacardi made in Mexico is the best rum made there. The Mexican plant was established around 1927. The plant in France was established long before that. I could not say exactly when. We had a plant in Spain but we do not know in what condition it is. Bacardi has put in the market the following brands: Bacardi Anejo, Bacardi 1873, Bacardi Carta de Oro, Bacardi Carta Blanca, Bacardi Consumo Corriente, Bacardi Carta de Plata, Bacardi Refino, Bacardi Carta Blanca Inglesa, Bacardi Marca Palmas. I think that is about all. The Bacardi Gold Label and the Bacardi White Label were put in the United States by Cia. Ron Bacardi through Schenley Bros. I must qualify that because before the Cuban company the Bacardi Corporation of New York made Bacardi White Label in New York. The Bacardi Gold Label was first put in the market by the Bacardi Company of Santiago Cuba. As to the Bacardi Silver Label, it is hard for me to answer who put

it in the New York market because I do not know for sure if before repeal Silver Label was, or how much for sale it was, but since repeal Silver Label has been placed in the New York market by Bacardi Corporation of San Juan, Puerto Rico, not by the Cuban company. The Cuban company is still manufacturing and producing Bacardi rum. It still sells Bacardi rum and the rum produced by the Cuban company is sold in Puerto Rico and in Continental United States now. In the trade Bacardi means a rum made by Bacardi. Bacardi of Mexico, or Bacardi of Puerto Rico or Bacardi of France, or Bacardi of Spain, because it is all made by Bacardi. That is why they send the men and select the material. It is all made by Bacardi. The Bacardi made in Puerto Rico is made by experts sent by the Cuban company, with the Bacardi Corporation of America paying their salaries, but they know how to make that fine rum and to make it exactly the same as the Cuban rum. I do not know how.

As to whether the Bacardi Corporation of America knows how to make Bacardi rum, that is a hard question for me to answer because Bacardi Corporation of America is not a person that we can ask, but I suppose that if we brought all the officers of Bacardi Corporation of America together, Bacardi of Cuba has part of them, and perhaps if you brought them all together they know how. I do not know. There is one officer of the Bacardi Corporation of America who is one of the four who knows the secret formula.

Without doubt the rum manufactured in Puerto Rico is manufactured by the Bacardi Corporation of America and actually done under the supervision of men from Cuban Bacardi who watch the quality and see that it is exactly the same.

Up to 1917 if anyone in New York and in Philadelphia asked for Bacardi he would be asking for the Bacardi made in New York. We have a plant in New York, not the Cuban company, it was the Bacardi Corporation of America with the same experts. We do not have that plant there now. When prohibition came

around that company sold all of its stock and went into liquidation.

If six months ago any man asked for Bacardi in New York or Philadelphia or Washington, he would be asking for Bacardi rum. In those three cities mentioned the rum would be made by Compañia Ron Bacardi, in Santiago, Cuba, and in San Diego, California, in all probability you would get Bacardi rum made in Mexico or Mexican Bacardi.

The American company has spent money in advertising. We have spent \$1524, I mean up to December 22nd, we had spent \$1524 in giving away samples. We had spent \$1700 in various kinds of advertising. We spent money in advertising what you have in your hands.

[Document marked "Identification No. 1 for Intervenor."]

I cannot say how many years before Bacardi was started to be manufactured outside of Cuba was it sold under the name Bacardi. It was many years ago. I know that Bacardi rum produced in Spain was sold in the United States. The Mexican plant was established around 1927. I could not tell when the French plant was established. In 1921 it had been in operation for many years. Today the name Bacardi in the trade has no connection with Cuba and with the Cuban company.

Mr. Sifre: Should I understand that when the word Bacardi in connection with Bacardi rum is mentioned now it does not necessarily mean rum Bacardi manufactured in Cuba?

Mr. Isaacs: I object to that question, your Honor. What the word means is not for this witness to state.

The Witness: There is just the one problem. I have had a person ask me if Bacardi was made in Italy, if it is an Italian product, if it is a Greek product.

The Court: But that is not the question. Here is the question Mr. Sifre is asking. Suppose you go in a store where they are selling Bacardi and ask for a bottle of Bacardi. Does it necessarily follow that you are getting a Bacardi made in Cuba? A. No. You will see on the label clearly where the Bacardi is made.

The signature appearing in the document marked Exhibit No. 1 for identification for the intervenors, and which is a circular letter under the heading the Bacardi Corporation of America, is a facsimile of my signature. This advertisement [referring to Exhibit No. 1 for identification] has been distributed in Florida, in New York City, in Massachusetts, in South Carolina. I think that is all. It has been distributed with my approval.

Mr. Sifre: I am going to read from this advertisement. It says: "Bacardi gave you Gold Label; they gave you White Label; now Bacardi gives you Silver Label." What Bacardi has given that to the trade, those three marks, those three brands of rum? A. Bacardi.

Mr. Sifre: Which Bacardi? A. Compania Bacardi has presented Gold Label and White Label and now comes Bacardi Corporation of America, under the heading with a facsimile of the bottle reading very clearly, "Puerto Rican Rum" and we say "Now Bacardi gives you Silver Label". The Cuban company gave the Gold Label. They also gave the White Label. The Bacardi Corporation of America at San Juan is giving "Silver Label".

We do not say in this ad that Silver Label was given by Bacardi Corporation of America and not by Bacardi because Bacardi presents Silver Label and it indicates very clearly here so that there will be no one to misunderstand it, "Ron Superior" and in large, bigger letters "Puerto Rican Rum". Bacardi in the first two lines of this ad, where it says "Bacardi gave you Gold Label and Bacardi gave you White Label" means Bacardi produced by Cuba and the other by Puerto Rico. It is very clear.

Gold Label has been sold in the United States by the Bacardi Company of Santiago, Cuba, and White Label has been sold in the United States by Compania Ron Bacardi, of Santiago, Cuba, Silver Label is going to be sold, perhaps, by Bacardi Corporation of America of San Juan, Puerto Rico, which is indicated on the label and in the circular. This advertisement was prepared by Schenley and it was approved by me.

The Court: When you use the word Bacardi do you mean a

producing company or do you mean a process? *A.* We mean a rum produced by the family, by the Bacardi family. That is the real meaning.

The Court: But do you have any reference to a particular process by which rum is made? *A.* In our advertisement, yes; in our sales promotion, yes, the general idea is this, that everyone or nearly everyone in the production of light rum has tried to imitate Bacardi. Nobody has been able to make it.

The Court: I am not interested in that phase of it. What I want to know is when you use the term Bacardi you do not say Bacardi and Company, you say Bacardi, and then you tell counsel that the name is Bacardi Company of America. It does not say that, it says Bacardi gave you. *A.* Yes.

The Court: You say that Bacardi refers there to the Cuban company in the first two instances. *A.* Well, because I was referring to an actual production by the family, the organization which has made those two rums, and which is making this one.

Mr. Sifre: Referring again to this advertisement. I call your attention to the page that reads, in part "Make mine with Bacardi". What Bacardi is that? *A.* As much Bacardi as Silver Label, as Gold Label, as Anejo, as '73. It is all Bacardi.

The Bacardi there used also includes the Puerto Rican product. And you can see from the labels where it comes from. The labels you see are very different: one is white, one is yellow, one has the indication of Cuba and the other reads "Puerto Rican Rum".

Mr. Sifre: Will you describe any of the Bacardi labels used by the Cuban company? *A.* The label that we have been using reads "Ron Superior, distilled and bottled by Bacardi Corporation of America, San Juan, P. R." It is silver in color. It has the Bacardi bat, and underneath in what we call the analysis label, it says that it has been produced in Puerto Rico by special authority of Cia. Ron Bacardi, S.A. of Cuba. That is a yellowish label. It is printed partly in black, partly in silver, partly in gold and at the top it reads: "Puerto Rican Rum".

The American company is using the bat which is one of the Ba-

cardi trade-marks on the labels of the Puerto Rican rum. Not on every bottle because before the preliminary injunction and when we were operating here we bottled a certain number of cases and because of the fact that the Treasurer advised us that we could not use the bat we printed labels and shipped out rum that did not have the bat. From the day the preliminary injunction was granted we are using the bat.

In 1933 the Cuban company sold to Schenley 15,400 cases.

I came to Puerto Rico around February 22, 1936 to look over the territory and decide whether or not it would be desirable to establish a plant for Bacardi Rum.

When the complaint was filed in this case we were manufacturing Silver Label in Puerto Rico. If you mean to have rum in stock and age we had another rum but we were not selling it or bottling it. At that time we were selling Ron Hatuey in Puerto Rico. Around January, 1937. At the time we filed the complaint we had already sold all the Hatuey we had bottled. We have no rum Hatuey left. But we have some Hatuey left in barrels that we could bottle if we desired.

The Cuban Company produces different classes of rum. The Puerto Rican Bacardi is exactly of the same quality as the corresponding Cuban Bacardi rum. Silver Label is the Cuban rum that corresponds to the Puerto Rican Bacardi. At the present moment the Cuban company is not producing Silver Label. I am not sure. I could not say. I have seen the labels and I have seen the bottles. I think that the Cuban company is producing Silver Label. I am the sales agent for the Cuban company in the United States and I am familiar with the various brands that the Cuban company puts in the United States market. The Cuban company is not producing and selling Silver Label in the United States. At the present moment I do not know for sure whether the Cuban company is producing and selling Silver Label. Somewhere else I have seen it. I have a bottle of Silver Label from Cuba. The American company is producing Silver Label in Puerto Rico. Silver Label is the Cuban Bacardi rum that corresponds to the Silver Label sold

by the American company. Silver Label is not sold generally [referring to Silver Label produced by the Cuban company] I mean it hasn't got a great big sale and I do not know if at the present moment they are bottling it. In all our labels . . . for instance in Havana and in Santiago, we carry the labels. I believe if anybody orders Silver Label they get it.

The Bacardi Corporation of America is not paying royalties during 1938 to the Cuban company on the sales made of Silver Label. I have spent \$1,750 already up to December 22nd and I have spent \$1,524 in giving away samples and I have contracted for 100 window displays at \$10 each, nice displays showing the Bacardi from Puerto Rico. That is about all. In the meantime in the month that has elapsed I have probably spent a few thousand dollars more in giving away samples, etc. We have spent so little money in advertising the Puerto Rican Bacardi because we have just started to sell it and we have no distribution. If you have no distribution and spend money on advertising, I believe you are pretty nearly throwing away the money. I want to convey to you the assurance that the only reason why Bacardi Company of Cuba did not make us pay a royalty during 1938 is because they know that the money that will have been spent in the royalty will have to be spent in advertisement. If we are able to work, I am quite sure that the first year I will spend \$500,000 to open a market for Silver Label Bacardi rum, Puerto Rican rum. The name Bacardi on the label helps. And the amount that the Cuban company has spent in advertising also helps decidedly. You would require to spend a great deal of money if that did not have the name Bacardi.

Since the granting of the preliminary injunction I have not exported any rum in bulk. I had at the time the preliminary injunction was applied for an interested party in buying 100,000 gallon of rum a month, but that interested party required the assurance that every month he was going to receive it, because he was going to build a plant. Since we could not give that assurance I so advised him and I turned him over to a concern manufacturing in the States. That was after the issuance of the preliminary in-

junction and as a result of conversations that we have had with Heubleins, we continued those conversations, but in view of the fact that we could not assure them that we could continue to supply the requirements, we decided to wait rather than put in a lot of money in advertising the bottled cocktail.

When I came and asked for the preliminary injunction I did not know that I could not sell rum to this concern in bulk. I felt that I could sell rum but then when it comes to the time to take paper and pencil and you work out how much it costs, then you drop it. You must also consider this, that if the preliminary injunction in respect to the use of the Bacardi name and the Bacardi trade-marks would have been denied to us but would have been granted to us with respect to shipment in bulk, we would just have shipped the goods out of Puerto Rico.

The product of the American Company, Puerto Rican Bacardi, already has a market in the United States because of the fact that Bacardi rum, Cuban Bacardi, sells and has been sold in considerable amounts in the states.

Bacardi Company of America has an agreement with Schenley to sell 10,000 cases a month provided the Bacardi has the Bacardi trade-marks and the name of the corporation. The labels and the trade-marks are those of the Cuban company that the Cuban company has authorized the American company to use. To open up a market for a new brand of rum? I was asked about that at the time of the preliminary injunction and I explained that I had tried to open a market for the sale of rum. In Mexico, where I did that work, it has taken around seven years. The Bacardi Corporation of America expects to substitute, in the United States market, the rum made in Cuba with the rum that the company is making and intends to make in Puerto Rico. The Cuban company is going to continue to manufacture Bacardi rum but just as it happened before prohibition the sale of Bacardi from Cuba disappeared completely, just as it happened in Mexico, that no Bacardi from Cuba is sold at all.

We are selling rum made by the American company at \$10.69

per case in our warehouse here in San Juan. The Bacardi rum put in the market by the American Company is sold at a lower price than the Cuban Bacardi because of the fact that this rum here does not have to pay a duty and because of the fact that with the hope of developing the rum market in the same manner that the Bacardi Company developed the rum market before prohibition, we have reduced our profits.

As to the difference, if any, between Ron Anejo and Gold Label, I testified that I am not an expert in the production or a chemist. There is a difference in taste. Today, or at least last month, we were bottling Carta de Oro that was over five years old, and Anejo is always bottled when it is over seven years old. The only difference between Gold Label and White Label is in age. There is a difference of about three years. I do not think there is much difference to speak of between White Label and Silver Label Bacardi. They are more or less of the same age. As to the difference between Palma and White Label, I do not think I have ever sold Palma, but I should think about a year and a half difference. There is a great deal of difference between Consumo Corriente and Silver Label. Corriente is only about three months old, and the Silver Label is over a year old. I could not tell you the price of Silver Label in Cuba. If you compare the price of the American Silver Label it is cheaper because we have reduced our profit. The rum Bacardi of Cuba is more expensive than the Puerto Rican rum. Cuban Bacardi is the same type of rum as the Puerto Rican Bacardi.

Mr. Sifre: Now, Mr. Bosch, I ask you if you did not testify the following at the hearing of the motion on the preliminary injunction:

"Q. Have you got any other explanation that will satisfy my doubts as to the question I asked you? Is that the only explanation you have? A. You do not know about the trade. There is always people . . . you see Rum Bacardi is pretty expensive and those people that buy that type of rum,

if they insist that they want the Cuban product they naturally are going to get it."

The Witness: Yes, but you were referring in that question, Mr. Sifre, if my memory is correct, to Hatuey rum.

I do not think that the Cuban product is of a superior quality to the Puerto Rican rum.

Mr. Sifre: I will read you the questions preceding that question, which I just read from this record, page 76:

"I thought Mr. Bosch, that you had stated that the rum Bacardi which you were going to produce was going to be exactly of the same quality as the Cuban rum? A. Yes, but Compania Ron Bacardi of Cuba make Ron Anejo, which is a seven year old rum and that could not be produced even though Bacardi Corporation of America had the right to produce it, until the time elapsed. It produces '1873' which is also seven years old, Carta de Oro, which is a five-year-old rum. You cannot hurry that. Now Carta Blanca is a younger rum, and that Puerto Rico can produce.

"Q. And does the Cuban company produce Ron Bacardi Carta Blanca? A. Yes.

"Q. Now my inquiry is directed, for instance, to that rum, and I again ask you, how do you explain the effect which the sale of such rum by you in Continental United States for a lower price than a similar rum produced and sold by the Cuban company would have on that Cuban company? A. It won't have any effect. I do not see how it can have any. They receive the same amount of money whether it is one way or whether it is the other.

"Q. But will not the Cuban company necessarily lose the market for that kind of rum when your rum can be purchased in the market for a lower price? A. I do not know. Mr. Sifre, to sell liquor it is very hard. I am going to tell you an experience. My biggest client in New York is Long-champs. They tell me that they will never buy liquor from Puerto Rico.

"Q. Have you got any other explanation that will satisfy my doubts as to the question I asked you? Is that the only explanation you have? A. You do not know about the trade. There is always people . . . you see rum Bacardi is pretty expensive, and those people that buy that type of rum if they insist that they want the Cuban product they naturally are going to get it. But whatever happens to Cuba, Cuba will always receive the same amount of money that we are receiving now, and that is why we have done this."

The Witness: Yes, I did testify that. I do not want to make any other explanation. We are producing Silver Label now. There is no difference between Silver Label and White Label. I can't pick out the difference. There is a slight difference in color. The Cuban company is producing in Cuba and selling in the United States, the White Label. When I said we do not indicate since 1937 where the Bacardi rum is made, by "we" I meant "me", personally, in my capacity as agent of Compania Ron Bacardi and agent of Bacardi Corporation of America. I place advertisements and I have them designed. And since 1937 I do not indicate where Bacardi rum is made.

Rum Bacardi is the finest Bacardi in the market. It is the best known rum in the market and it is the best rum made. It was the best rum known in the market in 1933, in 1934, and in 1935 and in 1936. Bacardi was well known in Puerto Rico and in the United States. It was made there and it was very well known.

Referring to the document marked "Identification No. 1" of the intervenor Destileria Serralles, Inc. [Exhibit J for Intervenor]. I desire to make the correction that that advertisement only has gone to the trade, to the package stores and to restaurants; that Longchamps is a chain of restaurants in New York.

Redirect Examination by Mr. ISAACS.

"Q. 1. Mr. Bosch, according to my recollection Mr. Sifre asked you whether or not your arrangements with Schenley require you to sell your rum bearing the Cuban labels, now I ask you, Mr.

Bosch whether or not that is so? A. No, Mr. Sifre asked me that question and I tried to convey to him that . . . or rather I understood it that what was meant was that in the label the name and trade-marks of Bacardi appear, but naturally with the indication of Puerto Rican rum and the indication that it was made in San Juan, and the indication that it was made under the control and by authority of Compania Ron Bacardi.

Redirect Examination by Mr. FERNANDEZ.

With regard to the list of companies appearing in Plaintiff's Exhibit AN which were manufacturing and distilling spirits in Puerto Rico before February 1, 1936, and whose designation or trade-mark had been used out of Puerto Rico, I know Brugal and National Liquor Company and possibly Ron Rico are those companies.

The document you are now showing me is a label of Ron Carioca corresponding to Ron Carioca manufactured here in the Marina in Puerto Rico. It is used now on the product instead of that one in evidence. It is used by Carioca Distillery and it is bottled for American Spirits, Inc.

[Label received in evidence without objection, marked "Exhibit AW for the Plaintiff".]

None of the intervenor, personally to me, have made threats about bringing suits against the Bacardi Corporation of America under Law No. 149.

Whereupon ABRAHAM FELSTEIN, was called on behalf of the plaintiff.

Direct Examination by Mr. FERNANDEZ.

My name is Abraham Felstein and I am general manager of Ron Carioca, Puerto Rico. The rum bearing the brand or name "Carioca" has never been sold outside of the Continental United States.

No cross-examination.

Whereupon JOSE MERCADO, a witness, was called on behalf of the plaintiff.

Direct Examination by Mr. FERNANDEZ.

My name is Jose Mercado and I am chief clerk of the office of the Executive Secretary.

In accordance with the summons I brought with me the files of certain registrations of Brugal and National Liquor Company. We have registration 3791 issued in the name of Juan Brugal, assigned to Brugal & Company, Puerto Rico and Dominican Republic, corporation organized under the laws of the Dominican Republic. The date is the 14th of December, 1934. The petition was filed on August 3, 1934 and the registration was granted on December 14th, 1934. The trade-mark comprises the words "Ron Brugal" and a shield. They started using that trade-mark in Puerto Rico in June, 1934. We have another trade-mark registered under Certificate 3792, same petitioner as 3791, date of first use in Puerto Rico July 20th, 1934, petition filed on August 10th, 1934, trade-mark registered on December 14th, 1934. The particulars of this trade-mark are "Rum Brugal" and a design comprising the Dominican flag, or flag of the Dominican Republic, together with the same shield of Brugal and the medals. This is Carta "B" and the other is Carta "D", Certificate 3793, date of first use July 20th, 1934, registered December 14th, 1934. The particulars of the trade-mark are "Ron Brugal, Extra" (Carta "D"), the shield and medals and the flag of the Dominican Republic, and San Juan Puerto Rico and Puerto Plata, R. D. Those are the Brugal registrations.

We have the Carioca registration in the name of the American Spirits, Inc., a corporation organized under the laws of Maryland, doing business at Rockefeller Center, New York City, date of first use in Puerto Rico February 19, 1936, petition filed February 21, 1936, registered July 30, 1936, under Certificate No. 4045. The particulars of this trade-mark are the words "Ron Carioca" together with the representation of eight medals, four on the right hand side and four on the left hand side, and a triangular device in gold at the foot of the label. These are medals. The trade-

mark comprises also a small label used on top or on the neck of the bottle with the words "Ron Carioca" and four medals, two on each side.

No cross-examination.

Whereupon, FRANK DORATHY, a witness, was called on behalf of the plaintiff.

Direct Examination by Mr. FERNANDEZ.

My name is Frank Dorathy and I am treasurer of Bacardi Corporation of America since April 15, 1937. Before that time I was manager of the San Juan Branch of the National City Bank of New York.

I have had occasion to work out figures regarding the shipping of rum in bulk from Puerto Rico in one gallon containers. I have checked the freight rates and costs on shipments of rum in one-gallon containers in the regular bottled cases and in shipments in barrels. The freight rate for bulk shipments, that is, in barrels, is 29 cents per cubic foot, and while the barrels may vary slightly in size they contain approximately 12.8 cubic feet. Those are 50-gallon barrels and ordinarily we would ship 45 to 48 gallons in a barrel. On the basis of 45 gallons the cost per gallon would be around eight cents, just a fraction over eight cents. On shipments in gallon containers and in the bottled goods, case goods, as they call it, the rate is 29 cents per cubic foot and the measurements work out, and of course vary according to the bottle or the shape of the gallon container, but the rate works out approximately fifteen cents per gallon of rum, maybe 14½ to 15 cents. As to how that would affect the price at which rum is sold we must, of course, take into consideration shipping costs as well as other costs. If it costs more to ship it the corresponding selling price will be higher.

As to whether rum can be sold as a business proposition in bulk in the United States, in one-gallon containers, depends on what you mean by bulk, since the Federal Alcohol Regulations define bulk containers as being larger than one gallon. We could have purchasers in the United States if we have to ship in gallon con-

tainers. I think there would be a market but it would be at a much higher price than if we were allowed to ship in fifty-gallon barrels. The gallon containers would be suitable for the wholesale and retail market, but not for further processing in the north.

Cross Examination by Mr. GONZALEZ.

Since the injunction was granted no shipments have been made in bulk by the Bacardi Corporation of America. It is less expensive to ship in bulk. Yes, we made a profit of \$50,000 in November and also the same amount in December. We still prefer to ship in bottles because our bottling plant is located in Puerto Rico, but it is possible to establish a bottling plant in another place. I did not say that we established our business on the possibility of establishing a bottling plant in another place. The preliminary injunction was to enable us to fill a demand for which there was an inquiry in our hands at that time. Inquiry for purchase of rum in bulk for making a prepared cocktail.

Mr. Fernandez: We have a document that we want to introduce in evidence. This is a certificate by the Secretary of the Senate of Puerto Rico showing the proceedings in the Senate of Puerto Rico on the approval of Law No. 149.

Mr. Sifre: What do you wish to prove by this?

Mr. Isaacs: If the court please, we have spoken from the very inception of this trial about a statute that is directed to one entity and only to one entity. Now Act No. 149 as it appears completely and finally enacted, includes only the one entity; but to bring home more clearly that the Legislature was not seeking to protect the re nascent rum industry, but was seeking to keep Bacardi out, we introduced this record to show that at one stage of this bill through the House and the Senate there were two people, two entities, who were caught by the bill and could not produce rum in Puerto Rico. The Senate then sent to the House to have the bill sent back for further amendment, and it was after that that Section 49 was inserted, and then we have the complete bill.

We submit that this is of prime importance when the court is considering the effect of the statute on the one person.

The Court: Frequently the courts resort to legislative records when there is some ambiguity about the statute. For instance, a bill was considered by a committee. If there is some ambiguity about it the courts frequently resort to that record to interpret the statute; what the motive was in passing it; what the purpose was, I cannot go into it. I will have to rule it out.

Mr. Isaacs: Take an exception.

[Document marked "Identification No. 2 for Plaintiff".

Admission refused.

[Thereupon plaintiff rests.]

Defendant's Case.

Mr. Guerra: Intervener Puerto Rico Distilling Company presents in evidence a certificate by the First Assistant Treasurer of Puerto Rico, Mr. Ramirez Vega, certifying that intervenor Puerto Rico Distilling Company is authorized to distill, rectify and warehouse distilled spirits in Puerto Rico.

[Document marked "Exhibit A for Intervenor", without objection.]

Mr. Guerra: Another certificate from the same source, to wit, the Assistant Treasurer of Puerto Rico, to the effect that intervenor has shipped from January 1, 1936 up to June 30th, 1937, 281,060.8 gallons of rum, having paid taxes to the amount of \$562,000 to the Treasurer of Puerto Rico, to show the importance of our business.

Mr. Fernandez: Objected to on the ground that it is immaterial, and irrelevant to the issues that are being heard in this case.

The Court: Objection sustained.

Mr. Guerra: Exception. Mark it for identification as refused.

[Document marked "Identification No. 2 for intervenor".

Admission refused.]

JOSE MARRERO DENIS, a witness called on behalf of intervenor Puerto Rico Distilling Company testified as follows:

Direct Examination.

My name is Jose Marrero Denis and I am connected with the local newspaper La Correspondencia de Puerto Rico. I am manager of the Circulation Department. I have brought with me the issues of La Correspondencia for March 6th, 13th and 20th of 1937. This that you are showing me is an advertisement published in La Correspondencia de Puerto Rico.

Mr. Guerra: Who has paid for this advertisement?

Mr. Isaacs: Objected to. I don't see the materiality or relevancy of this.

Mr. Guerra: Yes, indeed. It says here: "Try Hatuey, a good rum within the means of everyone, produced by Bacardi" not by the Bacardi Corporation of America. We want to show that this plaintiff came to court with unclean hands. They are trying to palm off on the public on Hatuey as a rum made by Bacardi of Cuba.

The Court: I am going to let you introduce your advertisements but as I indicated, I think, on yesterday, I would like you to direct your attention to the suggestion that Bacardi does not mean any particular producing company, but it means a process by which an article is made. I am not saying that I have reached that conclusion, but I would like to direct counsel's attention to that thought.

Mr. Fernandez: Exception.

[Document marked "Exhibit B for Intervenor".]

Mr. Fernandez: He is going to present three of them, all the same, in different issues of the newspaper.

Mr. Guerra: Yes, your Honor, to show that it is a campaign, a regular campaign.

The Court: Do you intend to follow that up by showing that it is not made by Bacardi?

Mr. Guerra: It is made by Bacardi Corporation of America, and they should show that.

The Witness: The date of this advertisement is March 13, 1937,

and it corresponds to the advertisement in that paper. I am not prepared to answer the question as to who paid for this advertisement. The date of this paper that you are showing me is March 20th, 1937, the Correspondencia of Puerto Rico. The advertisement that you are showing me is a copy of the original copy that I have here.

Mr. Isaacs: I would like to note an objection to each of these things presented in evidence.

The Court: I will note your objection.

[Documents marked "Exhibits C, D for Intervenor".]

JOSE M. BOSCH was called as a witness on behalf of intervenor Puerto Rico Distilling Company and testified as follows:

My name is Jose M. Bosch and I am vice-president of the Bacardi Corporation of America.

I am in charge of Bacardi Corporation of America at the present time in Puerto Rico though there is also Mr. Dorathy who is the treasurer. Mr. Dorathy is my subordinate.

What you are now showing me is an advertisement of Bacardi.

Mr. Fernandez: Objected to on the ground that this is irrelevant and immaterial testimony.

Mr. Guerra: It is directed to prove that whether they publish an advertisement in the States regarding the Santiago de Cuba rum they call in Bacardi. It has that secondary name attached to it.

The Witness: But Mr. Guerra, when we public [*sic*] also an advertisement about Silver Label or send an advertisement to the trade, it has no other name but Bacardi.

The Court: I am going to admit it.

Mr. Isaacs: Exception.

[Documents marked "Exhibit E for Intervenor".]

What you are now showing me is an advertisement of Bacardi made in Cuba.

[Objected to and admitted as "Exhibit F for Intervenor".]

[Plaintiff took an exception.]

This other one is an advertisement of Bacardi which appears in Esquire in April, 1937.

Mr. Isaacs: Perhaps your Honor will allow us a blanket objection and an exception?

The Court: Yes.

[Document marked "Exhibit G for Intervenor".]

This one is an advertisement of Bacardi. It refers to Bacardi. It has no bottle. It has no indication that it is from Cuba or any other place.

[Document marked "Exhibit H for Intervenor".]

The Court: All those advertisements are authorized either by the Bacardi Corporation of America or the Cuban company? A. Yes.

Q. Who authorized this? A. This has been paid by the Cuban company.

[Document marked "Exhibit I for Intervenor".]

None of these advertisements were paid for by the American company. I remember this advertisement but not this particular one. I know this design. I had it made. This appeared, this must have appeared . . . in the first place I did not contract for this advertising. If you refer to the drawing I had it made in Mexico when I was there. It is so fine and so good that I have used it in various places. I do not know when this one appeared and I do not know who paid for it.

[Witness excused.]

Mr. Isaacs: At this time I would like to move to strike from the record the testimony of this witness on the ground stated when we made the objection, and on the additional ground that if this evidence is presented to show unclean hands there is no testimony presented to connect this advertising with the plaintiff, and if there was any such evidence it was connected with the Cuban company.

The Court: I am going to let it stand.

Mr. Isaacs: Exception.

Mr. Sifre: May it please the court I wish to present in evidence

document offered yesterday and marked "Identification No. 1 for Intervenor".

Mr. Fernandez: Objected to on the same ground.

The Court: The same ruling and exception allowed.

[Document marked "Exhibit J for Intervenor".]

Whereupon ISMAEL RODRIGUEZ was called on behalf of the intervenor Puerto Rico Distilling Company and testified as follows:

Direct Examination.

My name is Ismael Rodriguez and I am connected with the local newspaper "El Mundo" as secretary to the Managing Editor. I have brought with me the issues of "El Mundo" corresponding to the 5th of February, 1937. This document that you are showing me is a copy of this article appearing in "El Mundo" on February 5, 1937.

Mr. Guerra: I offer this article in evidence.

Mr. Isaacs: I cannot see that we have gotten to the point yet that newspaper articles can be offered against the plaintiff. That is clearly hearsay.

The Court: What is the article?

Mr. Isaacs: This starts off with the heading: "House of Bacardi plans to establish itself in Puerto Rico"; the house of Bacardi.

The Court: I cannot admit that.

Mr. Guerra: Take an exception and ask to have it marked for identification as rejected.

[Document marked "Identification No. 3 for Intervenor".]

Admission refused.

[Witness excused.]

Mr. Guerra: We wish to introduce in evidence a bottle of ron Hatuey produced by the Bacardi Corporation of America and sold in Puerto Rico at the time this law was passed and at the time this suit was brought into court. The small bottle has Bacardi blown in the glass of the bottle. It contains the medals won not by Hatuey rum but by the Cuban rum, to mislead the public.

Mr. Isaacs: Exception.

[Labels marked "Exhibits K", "L" and "M" "for Intervenor".

[The defendants rest.]

Rebuttal.

Mr. Fernandez: In connection with this evidence that has just been submitted of the Hatuey label, we want to introduce a letter written by the Treasurer of Puerto Rico to Bacardi Corporation of America on January 27, 1937, approving that label, and attached to the letter is the approval of that same label, with the medals, by the Federal Alcohol Administration.

[Document marked "AX for the Plaintiff".]

The above is all the evidence necessary for a review of the rulings assigned as errors on this appeal.

Wherefore, Destileria Serralles, Inc., intervenor and appellant prays that the above statement of evidence be settled, approved and allowed by this Honorable Court as a true, full, correct and complete statement of all the evidence taken and given at the trial of said cause for use on the appeal taken to the Circuit Court of Appeals for the First Circuit.

San Juan, Puerto Rico, November 28, 1938.

ANTO. J. MATTA,

J. SIFRE, JR.,

Solicitors for Intervenor-Appellant

DESTILERIA SERRALLES, INC.

Service of the foregoing proposed statement of evidence and receipt of a copy thereof is hereby acknowledged this twenty-eighth day of November, 1938.

HARTZELL, KELLEY & HARTZELL,

by RAFAEL FERNANDEZ,

Solicitor for Plaintiff.

EXHIBIT A FOR PLAINTIFF.

Commonwealth of Pennsylvania Department of State

ARTICLES OF INCORPORATION

To the Department of State:

Commonwealth of Pennsylvania:

In compliance with the requirements of the "Business corporation Law", (Act No. 106), approved the 5th day of May A. D. 1933, the undersigned all of whom are citizens of the United States, desiring that they may be incorporated as a business corporation, do hereby certify:

1st.—The name of the corporation is Bacardi Corporation of America.

2nd.—The location and post office address of its initial registered office in this Commonwealth is 946-964 North Delaware Avenue, Philadelphia, Philadelphia County.

3rd.—The purpose or purposes of the corporation are:

The manufacture, production, distillation, redistillation, development, rectification, blending, mixing, purifying, recovering, flavoring, denaturalization of alcohol or alcoholic liquid for beverage, industrial and other purposes; to buy, sell, trade and deal in, either at wholesale or at retail, export, import, hold, use, distribute, store and warehouse alcohol and alcoholic liquors for beverage, industrial, and other purposes, either as principal, agent or factor.

4th.—The term of its existence is Perpetual.

5th.—The authorized apital stock of the corporation is \$100,000.00 divided into 1000 shares of the par value of \$100.00 each, all of one class.

6th.—The amount of paid in capital with which the corporation will begin business is \$500.00.

Note: There should be set forth the number and par value of all shares having par value, the number of shares without par value, and the stated capital applicable thereto. If the

shares are to be divided into classes, a description of each class, and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights granted to, or imposed upon, the shares of each class.

7th.—The names and addresses of the first directors and their terms of office are:

| Name | Address | Term of Office |
|---------------------|--|--|
| William H. Hoodless | 4604 Osage Avenue Philadelphia, Pa. | One year or until the next annual meeting of stock holders. |
| Pedro P. Polakoff | 3618 N. Camac St. Philadelphia, Pa. | One year or until the next annual meeting of stock holders. |
| H. Edgar Barnes | 1040 Indian Creek Rd. Overbrook, Penna. | One year or until the next annual meeting of stock holders. |

8th.—The names and addresses of the incorporators and the number and class of shares subscribed by each are:

| Name | Address | Number and class of Shares |
|---------------------|--|-------------------------------|
| William H. Hoodless | 4604 Osage Avenue Philadelphia, Pa. | 3 shares |
| Pedro P. Polakoff | 3618 N. Camac St. Philadelphia, Pa. | 1 share |
| H. Edgar Barnes | 1040 Indian Creek Rd. Overbrook, Penna. | 1 share |

WILLIAM H. HOODLESS [SEAL]
 PEDRO P. POLAKOFF [SEAL]
 H. EDGAR BARNES [SEAL]

Commonwealth of Pennsylvania

County of Philadelphia, ss:

Before me, a Notary Public in and for the county aforesaid, personally came the above named, William H. Hoodless, Pedro P. Polakoff, and H. Edgar Barnes, who, in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office the 24th day of April, A. D. 1934.

[NOTARIAL SEAL]

Lillian M. Fornan,

Notary Public

My Commission Expires March 9, 1935.

Approved and filed in the Department of State on the 24th day of April, A. D. 1934.

Richard J. Beamish

Secretary of the Commonwealth.

Charter Book No. 335—page 43.

Commonwealth of Pennsylvania Department of State
(State Seal)

To all to whom these Presents shall come,

Greeting:

Whereas, in and by the Business Corporation Law (Act No. 106), approved the 5th day of May, Anno Domini, one thousand nine hundred and thirty-three, the Department of State is authorized and required to issue a

Certificate of Incorporation

evidencing the incorporation of a business corporation organized under the provisions of that law.

And whereas, the stipulations and conditions of that law have been fully complied with by the persons desiring to incorporate as

Bacardi Corporation of America

Therefore, Know Ye, that subject to the Constitution of this Commonwealth, and under the authority of the Business Corporation Law, I do by these presents, which I have caused to be sealed

with the Great Seal of the Commonwealth, create, erect, and incorporate the incorporators and the subscribers to the shares of the proposed corporation named above, their associated and successors, and also those who may hereafter become subscribers or holders of the shares of such corporation, into a body politic and corporate in deed and in law by the name chosen and herein before specified, which shall exist perpetually and shall be invested with, and have and enjoy all the powers, privileges, and franchises incident to a business corporation and be subject to all the duties, requirements, and restrictions specified and enjoined in and by the Business Corporation Law and all other applicable laws of this Commonwealth.

Given under my hand and the Great Seal of the Commonwealth, at the City of Harrisburg, this 24th day of April, in the year of our Lord one thousand nine hundred and thirty-four and of the Commonwealth the one hundred and fifty-eighth.

RICHARD J. BEAMISH,

Secretary of the Commonwealth.

[GREAT SEAL]

I-J-No. 5522.

Commonwealth of Pennsylvania Department of State
Office of the Secretary of the Commonwealth

Harrisburg, May 25, 1937.

Pennsylvania: ss.

I do hereby certify, that the foregoing and annexed is a full, true and correct copy of Articles of Incorporation of the "Bacardi Corporation of America", also copy of Certificate of Incorporation issued thereon, as same appear on record in this Office.

I further certify, that a careful search of the records of this Department has failed to disclose any dissolution proceedings having been filed relative to said corporation, and so far as the records show, Bacardi Corporation of America appears to be a subsisting corporation of this Commonwealth.

In testimony whereof, I have hereunto set my hand and caused

the seal of the Secretary's Office to be affixed, the day and year above written.

RAY C. WEBER,

Deputy Secretary of the Commonwealth.

[Seal Secretary of the Commonwealth Pennsylvania]

I-K-No. 321.

Office of the Secretary of the Commonwealth of Pennsylvania

Harrisburg, May 25, 1937.

Pennsylvania: ss:

I, David L. Lawrence, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, do hereby certify, that the attestation or certificate hereunto attached is in due form and made by the proper officer, and that Ray C. Weber whose name is subscribed thereto, was at the time of subscribing the same Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

DAVID L. LAWRENCE,

[GREAT SEAL]

Secretary of the Commonwealth.

EXHIBIT B FOR PLAINTIFF.

United States of America

[SEAL]

Department of State

To all to whom these Presents shall come:

Greeting:

I certify that the document hereunto annexed is a true printed copy of the convention and protocol between the United States of America and other American Republics concerning trade-marks and commercial protection and registration of trade-marks, signed at Washington, February 20, 1929, as certified to the Government

of the United States by the Pan American Union, Washington, D. C., in accordance with Article 37 of the convention, and Article 19 of the Protocol.

In testimony whereof, I, Cordell Hull, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Chief Clerk and Administrative Assistant of the said Department, at the City of Washington, in the District of Columbia, this 11th day of May, 1937.

CORDELL HULL

Secretary of State.

By: (Name Illegible)

Chief Clerk and Administrative Assistant.

[Seal of the Department of State of the United States of America]

Attached to the foregoing by a pink ribbon is a printed pamphlet consisting of seventy-eight printed pages, being the

General Inter-American Convention for Trade Mark and Commercial Protection signed by the respective Plenipotentiaries of the United States of America, Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua and Honduras, at Washington on the twentieth day of February, one thousand nine hundred and twenty-nine, and a Protocol on the Inter-American Registration of Trade Marks signed on the same day by Plenipotentiaries of the said countries except Uruguay, Chile and Guatemala, as Proclaimed by the President of the United States of America.

Said trade-mark convention is not copied in full since it appears from the United States Statute at Large, 71st Congress 1929-1931, Vol. 46, part II, pages 2907-2977.

EXHIBIT C FOR PLAINTIFF.

390

Department of Commerce United States Patent Office

To all Persons to whom these Presents shall come: Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the Trade Mark Registered to Compania Ron Bacardi, S. A. May 2, 1933. Number 302,916

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord nine hundred and thirty-second and of the Independence of the United States of America this one hundred and sixty second.

CONWAY P. COE,

Commissioner of Patents.

[Seal Patent Office United States of America]

Attest: D. E. Wilson,

Chief of Division.

TRADE MARKS,

Class 49, Distilled Alcoholic Liquors

T. M. Serial No. (Series of 1905) Trade Mark No. 302916

331492 Registered May 2 1933

Act of Feb. 20, 1905

Name Compania Ron Bacardi, S. A. of Santiago de Cuba.
State of Cuba.

For Rum

Application filed complete Oct 24 1932

Examined and passed for publication (Signature Illegible) January 26, 1933

Examined for registration (Signature Illegible) Apr. 3 1933

Notice of Allowance Apr. 4, 1933

Application for renewal filed

Examined for renewal Renewed:

Representative John Imirie Stewart Maurice

Attorney John Imirie Munsey Bldg. City see paper No. 4

Associate attorney

Trade mark: No claim is made to the words "Trade Mark" appearing on the drawing.

Merchandise Rum

Claims use since Jan. 1915

Published in O. G. Feb 21 1933 U. S. Patent Office

Mail Division Oct 24 32 U S Patent Office

Application No. 331492 U S Patent Office

PETITION, STATEMENT AND POWER OF ATTORNEY.

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a Company duly organized under the Laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street,—Santiago de Cuba City, Republic of Cuba, has adopted and use the trade mark shown in the accompanying drawing, for Rum, in Class 49, Distilled Alcoholic Liquors, and present herewith five specimens showing the trade-mark as actually used by applicants upon the goods, and request that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since January, 1915.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

Said trade-mark has been registered in the Republic of Cuba, number 30,639, January 12, 1930.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.



The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., its attorney, with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON-BACARDI, S. A.

By Pedro E. Lay, Vice-President.

331492

[SEAL]

DECLARATION.

Republic of Cuba, Province of Oriente, Municipality of Santiago De Cuba.

Consulate of the United

States of America, ss:

Pedro E. Lay, being duly sworn, deposes and says that he is the Vice-President of the Company, the applicant named in the foregoing statement; that he believes said Company to be the owner of the trade-mark sought to be registered, that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in identical form or in any such near resemblance thereto as might be calculated to deceive; that the said trade-mark has been registered in the Republic of Cuba on the 12 January 1930, under the number 30,639; that the description and drawing presented truly represent the trade-mark to be registered; and that the specimens show the trade-mark as actually used upon the goods.

[SEAL]

PEDRO E. LAY

Subscribed and sworn to before me, at Santiago de Cuba, Republic of Cuba, this 28th day of September, 1932.

Edwin Schoenrich,

[SEAL]

Consul of the United States of America.

Consular Serial No. 625; \$2.00 Fee Prescribed.—Fee Stamp affixed to this document. (Cancelled Stamp)

Department of Commerce
United States Patent Office Washington

Mills) F

Please find below a communication from the Examiner in Charge of this application.

THOMAS E. ROBERTSON,
Commissioner of Patents.

30

UNITED STATES PATENT OFFICE

COMPANIA RON BACARDI, S. A., OF SANTIAGO DE CUBA, CUBA

ACT OF FEBRUARY 20, 1905

Application filed October 24, 1929. Serial No. 831,482.



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago de Cuba city, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and present herewith five specimens showing the trade-mark as actually used by applicants upon the goods, and request that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since January, 1915.

Applicant is the owner of international registration No. 172, June 29, 1920, and U. S. registration No. 284,224 to 284,228, inclusive, June 16, 1931.

No claim is made to the words "Trade Mark" appearing on the drawing.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

Said trade-mark has been registered in the Republic of Cuba, Number 30,639, January 12, 1930.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoint John Imirie, of Munsey Building, Washington, D. C., its attorney, with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

[L. S.]

COMPANIA RON BACARDI, S. A.,

By PEDRO E. LAY,
Vice President.

Applicant: Compania Ron Bacardi, SA Ser. No. 331,492

Filed Oct. 24, 1932 For Trade Mark.

John Imirie, Munsey Building, Washington, D. C.

Mailed Nov 3—1932

A certified copy of the foreign registration is requested filed with the papers in this case.

If claimed, ownership of the following registration is requested set up in the state:

International No. 172, June 29, 1930;

U. S. 284,224 to 284,228, inclusive, June 15, 1931.

The following disclaimer is suggested entered in the statement:

No claim is made to the words "trade Mark".

When these informalities have been adjusted the mark may publish.

MILLS

[A bat within a circle]

Trade-marks Jan 25—1933 U. S. Patent Office

In the United States Patent Office

In re application Compania Ron Bacardi, S. A. Trademark,

Filed October 24, 1932, Serial No. 331,492 Div.

Hon. Commissioner of Patents, Washington, D. C.

Sir:—This amendment is responsive to the official action of November 3, 1932.

In the statement insert:

Applicant is the owner of International Registration No. 172, June 29, 1920, and U. S. Registration No. 284,224 to 284,228, inclusive, June 16, 1931.

No claim is made to the words "Trade Mark" appearing on the drawing.

A certified copy of applicant's Cuban registration is filed herewith.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.

By John Imirie

331492-A

January 24, 1933.

Luis Testar Y Font, Acting Chief of the Division of Copyrights,
Trade-Marks and Patents of the Agriculture, Commerce and
Labor Department of the Republic of Cuba,

Certifies:

First: That on January 4, 1930, there was issued in favor of
Compania Ron Bacardi, S. A., certificate of renovation number
Thirty Thousand Six Hundred and Thirty-nine, corresponding to
the trade-mark, without denomination to distinguish rum, said
renovation being effective from the twelfth of January of the
said year.

Second: That the design hereinafter affixed hereto is exactly
the same as the said trade-mark.

[Bat in a Circle]

Trade Mark

Third: That the aforesaid trade-mark is at present in full force
and effect.

And on petition of Dr. Carlos Garate Bru, on behalf of Com-
pania Ron Bacardi, S. A. I issue these presents approved by the
Assistant Secretary of the Department, at Havana, on the sixth
day of January, Nineteen Hundred and Thirty-three.

Signature Illegible

Approved: Signature Illegible Asst Secretary.

Trade mark Division 237

Paper No. 3

Department of Commerce

United States Patent Office Washington

John Imirie, Munsey Building, Washington, D. C.

The application for the Registration of a Trade-mark filed by
Compania Ron Bacardi, S. A. Oct. 23 1932 Serial No. 331,492, in
Class 49 has been examined and passed for publication, in compli-
ance with section 6 of the act authorizing the Registration of Trade-
Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of Feb 21
1933

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time for Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

THOMAS E. ROBERTSON,

Commissioner of Patents

331492-7.

No. 331 492

Department of Commerce

United States Patent Office Washington

Mailed Apr 4 1933

Compania Ron Bacardi S. A.

Sir: Your application for registration of trade-mark for rum Registered May 2-1933 has been examined and allowed.

The Certificate of Registration will be issued, and forwarded to you, as soon as practicable in due order of business.

Very respectfully,

THOMAS E. ROBERTSON

Commissioner of Patents

John Imirie Munsey Bldg. Washington, D. C.

331-492-8

Registered May 2, 1933

Trade-Mark 302,916

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A. of Santiago de Cuba, Cuba.

Act of February 20, 1905

Application filed October 24, 1932. Serial No. 331492

[Bat in a Circle]

STATEMENT

To the Commissioner of Patents:-

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago de Cuba city, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum in Class 49, Distilled alcoholic liquors, and present herewith five specimens showing the trade-mark as actually used by applicants upon the goods, and request that the same be registered in the United States Patent Office in accordance with the act of February 20 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since January, 1915.

Applicant is the owner of international registration No. 172, June 29, 1920, and U. S. Registration No. 284,224 to 294,228, inclusive, June 16, 1931.

No claim is made to the words "trade-Mark" appearing on the drawing.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

Said trade-mark has been registered in the Republic of Cuba, Number 30,639, January 12, 1930.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoint John Imirie, of Munsey Build-

ing, Washington, D. C., its attorney, with full powers of substitution and revocation, to prosecute this application for registration, to make alteration and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.

(L.S.)

by Pedro E. Lay, Vice-President

EXHIBIT D FOR PLAINTIFF.

No. 4 Appt. of Rep.

Letterhead of Compania Ron Bacardi, S. A. Santiago de Cuba

January 28th, 1937

Commissioner of Patents Trade Mark Division Washington, D. C.

Dear Sir:—The undersigned hereby designates Stewart Maurice, whose postal address is 149 Broadway, New York City, on whom process or notice of proceeding affecting the right to ownership of trade mark No. 302916 registered to the undersigned on May 2nd, 1933, brought under the laws of the United States, may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA RON BACARDI, SA

331 429-9

By Jose A. Bosh, Vice-Pres.

Classification

Contents:

Application O. K. papers. Briefed.

1. Letter Nov. 3—1932
2. Amdt A and for Reg. Cert. Jan. 24, 1933.
3. No. of P. Jan. 27 1933
4. Appt. of Rep.

331 492-10

Department of Commerce
United States Patent Office

390

To all Persons to whom these Presents shall come, Greeting:

This is to certify that the annexed is a true copy from the rec-

ords of this office of the File Wrapper and Contents, in the matter of the Trade Mark Registered to Compania Ron Bacardi, S.A., March 6, 1934. Number 310654.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord one thousand nine hundred and thirty-seven and of the Independence of the United States of America the one hundred and sixty-second.

CONWAY P. COE,

Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division.

Class 49 Distilled Alcoholic Liquors T. M. Serial No.
(Series of 1905) 343 592 Act of Feb. 20, 1905

"Bacardi" Case A Trade-Mark No. 310 654 Mar. 6, 1934

Name ° Compania Ron Bacardi, S. A.

of Santiago de Cuba

State of Cuba

For Rum

Application filed complete Nov. 13, 1933.

Examined and passed for publication A. W. G. Nov. 30-1933.

Examined for registration A. W. G. Feb. 5-1934.

Notice of Allowance Feb. 6-1934.

Representative John Imirie (Stewart Maurice) (149 Broadway,
N. Y.)

Attorney John Imirie—Munsey Bldg. City [Note paper No. 2]

Merchandise Rum

Claims use since 1862

Published in O. G. Dec. 26-1933. U. S. Patent Office.

Under Ten-year Proviso

Nov. 13-33-84306 K-Check-\$15-00

Mail Division Nov. 13-33. U. S. Patent Office

John Imirie, Solicitor of Patents

Munsey Building 1329 E. St. Northwest

Washington, D. C., November 10, 1933.

Hon. Commissioner of Patents, Washington, D. C.

Sir: Enclosed please find papers for an application for registration of a trade-mark in the name of Compania Rum Bacardi, S. A., Case A.

Applicant has obtained a Cuban registration, No. 30,513 a certified copy of same being in the file or registration No. 285,308 and the Examiner is referred to registration No. 285,308 for such copy.

Respectfully,

Enc. I:C

JOHN IMIRIE.

343 592-1.

T. M. 654

Application No. 343,592.

Case A

Mail Division

Nov. 13-33

U. S. Patent Office.

PETITION AND STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, and located at Santiago de Cuba, Cuba, and doing business at Aguilera Baja, 32, Santiago de Cuba,

has adopted and used the trade-mark shown in the accompanying drawing for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark has been continuously used and applied to said goods in applicant's business since 1862. The trade-mark is applied or affixed to the bottles or to

the boxes containing the same, by means of labels having the mark printed thereon.

The mark has been in actual use as a trade-mark by the applicant and applicant's predecessors from whom title was derived for ten years next preceding February 20, 1905, and such use has been exclusive.

Applicant is the owner of International Registration Nos. 172, dated June 29, 1920; 176, dated June 29, 1920; 503, dated June 30, 1921; and U. S. registrations Nos. 284,228 dated June 16, 1931; 284,227 dated June 16, 1931; 302,916 dated May 2, 1933; 302,976 dated May 2, 1933; 284,226 dated June 16, 1931; 284,225 dated June 16, 1931; 284,224 dated June 16, 1931; and 285,308 dated July 21, 1931, and 20,172 dated September 29, 1931.

Said trade-mark has been registered in the Republic of Cuba, No. 30,513, April 30, 1929.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice

Note paper No. 2.

343 492-2 - 127

of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By Luis J. Bacardi, Vice-President.

343 592. 3-

DECLARATION

City of Washington

District of Columbia ss;

Luis J. Bacardi, being duly sworn, deposes and says that he is the Vice-President of the company, the applicant named in the

foregoing statement; that he believes the foregoing statement is true; that he believes said company is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark has been registered in the Republic of Cuba, on April 30, 1929, No. 30,513 that the description and drawing presented truly represent the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

LUIS J. BACARDI

Sworn to and subscribed before me, a notary public, this 27th day of October, 1933.

Elsie L. Leishear

Notary Public

343 592-4-

[NOTARIAL SEAL]

Department of Commerce
United States Patent Office Washington

John Imirie Munsey Bldg. Washington, D. C.

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A. Nov. 13, 1933, Ser. 343,592, in Class 49, has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks approved February 20, 1905. The mark will be published in the Official Gazette of Dec. 26, 1933.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefore, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE

Commissioner of Patents.

343592 - 5 -

No. 343,592.

Department of Commerce

United States Patent Office Washington

Mailed Feb. 6-1934.

Compania Ron Bacardi, S. A.,

Sir: Your application for registration of trade-mark for rum Registered Mar. 6, 1934 has been examined and allowed.

The Certificate of Registration will be issued and forwarded to you as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE

Commissioner of Patents.

John Imirie Munsey Bldg. Washington, D. C.

343 592 - 6 -

Registered Mar. 6, 1934

Trade-Mark 310,654

United States Patent Office

Compania Ron Bacardi, S. A., Santiago de Cuba, Cuba

Act of February 20, 1905

Application November 13, 1933, Serial No. 343,592.

BACARDI STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, and located at Santiago de Cuba,

Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark has been continuously used and applied to said goods in applicant's business since 1862. The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

The mark has been in actual use as a trade-mark by the applicant and applicant's predecessors from whom title was derived for ten years next preceding February 20, 1905, and such use has been exclusive.

Applicant is the owner of international registration Nos. 172, dated June 29, 1920; 176, dated June 29, 1920; 503, dated June 30, 1921; and U. S. registrations Nos. 284,228 dated June 16, 1931; 284,227 dated June 16, 1931; 302,916 dated May 2, 1933; 302,976 dated May 2, 1933; 284,226 dated June 16, 1931; 284,225 dated June 16, 1931; 284,224 dated June 16, 1931; and 285,308 dated July 21, 1931, and 20,172 dated September 29, 1891.

Said trade-mark has been registered in the Republic of Cuba, No. 30,513 April 30-1929.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By Luis J. Bacardi, Vice-President.

Letterhead of Compania Ron Bacardi, S. A.

Santiago de Cuba, January 29th, 1937.

Commissioner of Patents, Trade Mark Division, Washington,
D. C.

Dear Sir: The undersigned hereby designated Stewart Maurice, whose postal address is 149 Broadway, New York City, on whom process or notice of proceedings affecting the right to ownership of trade mark No. 310654 registered to the undersigned on March 6th, 1934, brought under the laws of the United States may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA "RON BACARDI" S. A.,

By J. M. Bosch, Vice-President.

343 592-7-

Classification 49

Contents: Application OK papers Briefed

1. N. of P. Dec. 1, 1933 a Appt. of Rep. Mar. 13-1937-

Trade-Marks Class 49—Distilled Alcoholic Liquors

EXHIBIT E FOR PLAINTIFF.

Department of Commerce
United States Patent Office

390

To all Persons to whom these Presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents in the matter of the Trade Mark Registered to Compania Ron Bacardi, S. A. January 7, 1936. Number 331,459.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this third day of April, in the year of our Lord one thousand

nine hundred and thirty-six and of the Independence of the United States of America, the one hundred and sixtieth.

CONWAY P. COE,

[SEAL]

Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division.

T. M. Serial No. (Series of 1905) 359 539

Trade-Mark No. 331 459 Registered Jan. 7-1936.

Act of Feb. 20-1905.

Name Compania Ron Bacardi, S. A.

of Santiago

State of Cuba

For Rum

Application filed complete: Dec. 21-1934.

Examined and passed for publication F. A. Richmond, Oct. 3-1935.

Examined for registration F. A. Richmond, Dec. 9-1935.

Notice of allowance Dec. 10-1935.

Examined for renewal Pg. Renewed Pg.

Representative John Imirie.

Attorney John Imirie Munsey Bldg. City.

Under Ten-Year Proviso

Trade-Mark: The drawing is lined in gold.

Merchandise: Rum.

Claims use since 1889.

Published in O. G. Oct. 29-1935 U. S. Patent Office

No. 359 539.

PETITION AND STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, and located at Santiago de Cuba Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and use the trade-mark shown in the

accompanying drawing for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895, and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was granted August 14, 1935, No. 54,838.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments thereto, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay, Vice-President

359 359-1-

DECLARATION

Republic of Cuba, Province of Oriente,
Consul of the United States of America
at Santiago de Cuba, ss:

Pedro E. Lay, being sworn, deposes and says, that he is Vice-President of the company, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said company is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in identical form or in any such near resemblance thereto as might be calculated to deceive; that an application for registration of said trade-mark has been filed in Cuba, on October 27, 1934; that the description and drawing presented duly represents the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

{SEAL}

PEDRO E. LAY

Subscribed and sworn to before me, at Santiago de Cuba, Cuba,
this 21st day of November, 1934.

Harry W. Story

Vice-Consul of the United States of America

Service No. 730—Fee \$2-00.

{CONSULAR SEAL}

Cancelled Fee Stamp \$2-00

359 539-2

Department of Commerce
United States Patent Office Washington

Jen/F.

Please find below a communication from the Examiner in charge
of this application Conway P. Coe Commissioner of Patents.

Applicant: Compania Ron Bacardi, S. A.

Ser. No. 359,539

File Dec. 21, 1934.

For Trade-mark

Mailed Mar. 9-1935

John Imirie Munsey Building, Washington, D. C.

Applicant is required to file a certified copy of the corresponding mark when registered in Cuba. Paragraph 3 of the statement should then be charged in accordance with the registration data.

Paragraph 2 of the statement is not understood, particularly in view of the alleged date of use of 1901 of the mark in its present form.

Applicant should disclaim all wording with the exception of "Carta Blanca", "Bacardi", "Bacardi y Cia", and "Establecidos en 1862".

Registration is refused in view of the following registered marks:

284,224 Compania Ron Bacardi, S. A., June 16, 1931;
284,225 Compania Ron Bacardi, S. A., June 16, 1931;
284,228 Compania Ron Bacardi, S. A., June 16, 1931;
302,916 Compania Ron Bacardi, S. A., May 2, 1933;
310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

359 539-3.

359,538/2

If applicant is the present owner of these registrations, it should be made to so appear in the statement.

("Carta Blanca Superior", etc.) C. N. G.

F. A. RICHMOND,

Examiner.

In the United States Patent Office
In re application Compania Ron Bacardi, S. A.
Trade-mark Filed December 21, 1934.
Serial No. 359,539 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action of March 9, 1935, received.

In the statement, change "1901" to "1889"; line 12, after "mark" insert "with the exception of the medal awarded in 1900"; after line 13, insert:

"The drawing is lined to represent the color gold."

Applicant is the owner of the following registrations:

284,224 Compania Ron Bacardi, S. A., June 16, 1931;
284,225 Compania Ron Bacardi, S. A., June 16, 1931;
284,228 Compania Ron Bacardi, S. A., June 16, 1931;
302,916 Compania Ron Bacardi, S. A., May 2, 1933;
310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

In the statement, line 15, after "1934" change the period to a comma and insert "and was granted August 14, 1935, No. 54,838".

A certified copy of the Cuban registration is filed herewith.

Remarks:

Since the mark is claimed under the ten year clause of the Act, it is not believed necessary to disclaim the wording as suggested by the Examiner.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By John Imirie, Attorney.

September 27, 1935.

359 539-5.

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1906

Application December 21, 1934, Serial No. 239,599



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1906. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895, and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1906, and such use has been exclusive.

The drawing is lined to represent the color gold. Applicant is the owner of the following registrations: 294,224 Compania Ron Bacardi, S. A., June 16, 1931; 294,225 Compania Ron Bacardi,

S. A., June 16, 1931; 294,228 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was granted August 14, 1935, No. 54,838.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,
By PEDRO E. LAY,
Vice-President.

54838

Doctor Ramon Alonso y Padrol, Director of Trade-Mark & Patents of the Commerce Department of the Republic of Cuba.

[SEAL]

Aug. 14-35.

Certifies: First: That in accordance with the records in this office, it is shown:

That on the fourteenth of August, Nineteen Hundred and Thirty-Five, there was issued in favor of Compania Ron Bacardi, S. A., the certificate of registration number Fifty-four Thousand Eight Hundred and Thirty-eight, corresponding to a trade-mark made up of a label formed by the joining of two marks protected under certificates Nos. 30,044 and 42,433, called "Bacardi y Cia.", to distinguish rum and all kinds of wines, liquors and beers, the design of which is exactly the same as the one hereinafter affixed.

[Facsimile of Label]

Seal: Commerce Department Division of Trade-Marks & Patents

Second: That the said trade-mark is not in full force and legal effect.

And on the petition of Dr. Carlos Garate Bru, on behalf of Compania Ron Bacardi, S. A., this certificate is issued and approved by the Assistant Secretary of the Department at Havana, on the thirteen day of the month of September, Nineteen Hundred and Thirty-Five.

DR. R. ALONSO PADROL.

Approved: (Signature illegible)

Assistant-Secretary

[SEAL]

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-mark Filed December 21, 1934.

Serial No. 359,539 Room 2608.

Hon. Commissioner of Patents, Washington, D. C.

Sir; Please amend as follows:

In the amendment to line 12 of the statement, after "mark"

erase "with the exception of the medal awarded in 1900" and substitute the following: "with the exception of the medals awarded in 1900, 1895 and 1892".

This amendment is made as a result of an oral interview had with the Examiner, and is believed to place the application in condition for publication.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By John Imirie, Attorney.

October 3, 1935.

359 539-8.

Department of Commerce

United States Patent Office, Washington

John Imirie, Munsey Bldg., Washington, D. C.

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A., filed Dec. 21, 1934, S. N. 359 539, in Class 49 (Carta Blanca Superior) has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of Oct. 29, 1935.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office, within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as

published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE,

Commissioner of Patents.

359 539-9.

No. 359 539.

Department of Commerce
United States Patent Office, Washington

Compania Ron Bacardi, S. A.

Mailed Dec. 11, 1935.

Sir: Your Application for Registration of Trade-Mark Class 49 (Carta Blanca Superior, etc.) Registered Jan. 7, 1936 has been examined and allowed.

The Certificate of Registration will be issued and forwarded to you as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE,

Commissioner of Patents.

John Imirie, Munsey Bldg., Washington, D. C. 359 539-10.

UNITED STATES PATENT OFFICE

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1906

Application December 21, 1934, Serial No. 359,539



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1906. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1888. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895, and 1893, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1906, and such use has been exclusive.

The drawing is lined to represent the color gold.

Applicant is the owner of the following registrations: 284,224 Compania Ron Bacardi, S. A., June 16, 1931; 284,225 Compania Ron Bacardi,

S. A., June 16, 1931; 284,228 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was granted August 14, 1935, No. 54,838.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By PEDRO E. LAY,
Vice-President.

Registered Jan. 7, 1936 Trade-Mark 331,459

United States Patent Office

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905.

Application December 21, 1934, Serial No. 359,539

[Facsimile of Label]

STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895 and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

The drawing is lined to represent the color gold.

Applicant is the owner of the following registrations: 284,224 Compania Ron Bacardi, S. A., June 16, 1931; 284,225 Compania Ron Bacardi, S. A., June 16, 1931; 284,228 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,552 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,654 Com-

pania Ron Bacardi, S. A., Mar. 6, 1934; 310,555 Compania Ron Bacardi, S. A., March 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was granted August 14, 1935, No. 54,828.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay Vice-President.

426

Classification Trade Marks
Class 49, Distilled Alcoholic Liquors.

Contents:

Application O. K. papers, Briefed.

1. Mar. 9, 1935
2. Arndt, A. & F. A. Rigbert Sep. 21, 1935
3. Arndt, B. Oct. 3, 1935. N. of P.
4. Oct. 4, 1935

359 539-11.

EXHIBIT F FOR PLAINTIFF.

390

Department of Commerce
United States Patent Office

To all Persons to whom these Presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents in the matter

of the Trade Mark Registered to Compania Ron Bacardi, S. A.,
September 1, 1936 Number 338,241.

In testimony whereof, I have hereunto set my hand and caused
the seal of the Patent Office to be affixed, at the City of Washing-
ton, this twenty-second day of July, in the year of our Lord one
thousand nine hundred and thirty-seven and of the Independence
of the United States of America the one hundred and sixty-second.

CONWAY P. COE,

Commissioner of Patents.

[SEAL]

Attest: D. E. Wilson

Chief of Division.

T. M. Serial No.,

(Series of 1905)

349825

Carta Blanca

Bacardi y Cia

Trade-mark No. 338 241

Act of February 20, 1905

Name Campania Ron Bacardi, S. A.

of Santiago De Cuba

State of Cuba

For Rum

Application filed complete: Apr. 11 1934

Examined and passed for publication F. A. Richmond Feb. 20,
1936

Examined for registration F. A. Richmond Aug 3 1936

Notice of Allowance Aug 4 1936

Examined for renewal Pg Renewed: Pg.

Representative John Imirie Stewart Maurice (See paper No.
9)

Attorney John Imirie Munsey Bldg City

Trade mark: Applicant is the owner of registrations No. 284,
225 and No. 310,654.

Merchandise: Rum

Claims use since 1887

Published in O. G. Mar 17 1936 U S Patent Office

Application No. 349,825

PETITION, STATEMENT AND POWER OF ATTORNEY

To the Commissioner of Patents:—

Compania Ron Bacardi, S. A., a company duly organized under the Laws of the Republic of Cuba, located and doing business at No. 30, Aguilera Baja Street, Santiago de Cuba City, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing for Rum, in Class 49, Distilled Alcoholic Liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and request that the same be registered in the United States Patent Office in accordance with the Act of February 26, 1905, as amended.

The Trade-Mark has been continuously used and applied to said goods in applicant's business since 1887; and the words "Bacardi y Cia." since 1862.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

An application for registration of said trademark was filed in Cuba on April 3rd, 1934, registered November 28, 1935, No. 55,273. Applicant is the owner of registrations No. 310, 654, and No. 284,225.

John Imirie, whose postal address is Munsey Building, Washington, D. C. is designated, on whom process or notice of proceeding affecting the right to ownership of said Trade-Mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certifi-

cate to to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By: Luis J. Bacardi, Vice-President.

349 825-1

DECLARATION

Republic of Cuba,

City and Province of Havana, ss:

United States Consulate General

Luis J. Bacardi, being duly sworn, deposes and says that he is the Vice-President of the Company, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said Company is the owner of the trade-mark sought to be registered; and no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in identical form or in any such near resemblance thereto as might be calculated to deceive; that an application for registration of said trade-mark has been filed in Cuba, on April 3rd, 1934; that the description and drawing presented truly represent the trade-mark sought to be registered, and that the specimen shows the trade-mark as actually used upon the goods.

LUIS J. BACARDI

Subscribed and sworn to before me at Havana City, Republic of Cuba, this 3rd day of April, 1934.

[CONSULAR SEAL]

R. F. Washington

Consular Fee Stampt \$2/00 Cancelled

349 825-2

Department of Commerce

Jen/f

United States Patent Office, Washington

Please find below a communication from the Examiner in charge of this application.

CONWAY P. COE,

Commissioner of Patents.

Applicant: Compania Ron Bacardi, S. A.

Ser. No. 349,825 Filed Apr 11 1934 For Trade-Mark
Mailed May 16, 1934

John Imirie, Munsey Building, Washington, D. C.

Applicant is required to file a certified copy of the mark when registered in Cuba. Paragraph 4 of the statement should then be changed in conformity with the registered data.

Ownership should be claimed of prior registered mark No. 284,225.

A search of Class 49 fails to show that any trade-mark like applicant's has been registered for use on the same kind of goods.

A. W. JENNISON

("Carta Blanca Bacardi y Cia")

349 825-3.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed April 11, 1934

Serial No. 349,925 Room 2508

Hon. Commissioner of Patents, Washington, D. C.

Sir:—Official action of May 16, 1934, received.

Insert in the statement, "Applicant is the owner of registration No. 284,225".

Applicant has made application for registration of the trade-mark in Cuba, but because of the delay in the granting of registrations in that country, applicant is unable to supply a certified copy of this particular time.

It is understood that the registration will in due course issue, and when issued, a certified copy will be supplied.

Respectfully submitted,

COMPANIA RON BACARDI, SA.

By John Imirie, Attorney.

April 29, 1935

349 825-4.

Department of Commerce

Jen/F

United States Patent Office, Washington

Please find below a communication from the Examiner in charge
of this application.

CONWAY P. COE,

Commissioner of Patents.

Applicant: Compania Ron Bacardi, S. A.

Ser. No. 329,825 Filed Apr 11 1934 For Trade-Mark

Mailed May 10, 1935

John Imirie, Munsey Building, Washington

Responsive to amendment filed April 29, 1935.

The application has been returned to the files pending the filing
of a certified copy of the Cuban registration when issued. Para-
graph 4 of the statement should then be changed in accordance
with the registration data.

RICHMOND, Examiner.

(Carta Blanca Bacardi y Cia")

A.W.J.

349 825-5.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed April 11, 1934

Serial No. 349,925 Room 2505

Hon. Commissioner of Patents, Washington, D. C.

Sir: An official action of May 10, 1935, received.

A certified copy of the Cuban Registration is filed herewith.

Respectfully submitted,

COMPANIA RON BACARDI, SA.

By John Imirie, Attorney.

January 23, 1936

349 825-6.

Doctor Ramon Alonso y Padrol, Director of Trade-Mark and
Patents of the Commerce Department of the Republic of Cuba

Certifies:

First: That in accordance with the records in this office, it is

shown: That on the twenty-eighth of November, Nineteen Hundred and Thirty-Five, there was issued in favor of Compania Ron Bacardi, S. A., the certificate of registration number Fifty-five Thousand Two Hundred and Seventy-three, corresponding to a commercial trademark called "Carta Blanca Bacardi y Cia", to distinguish rum, cognac, anisated, wines, beers and liquors of all kinds; and the design of which is exactly the same as the one affixed as follows:

Carta Blanca
Bacardi y Cia.

Second: That the trade-mark aforesaid is at present in full force and legal effect.

And on petition of Dr. Carlos Garate Bru, in behalf of Compania Ron Bacardi, S. A., the present certificate is issued approved by the Assistant Secretary of the Department, at Havana, on the thirteenth day of the month of January, Nineteen Hundred and Thirty-Six.

Dr. R. ALONSO PADROL

Approved: (Signature Illegible)

Asst. Secretary

349 825-7.

Jen/F

Department of Commerce
United States Patent Office, Washington

Please find below a communication from the Examiner in charge of this application. Conway P. Coe, Commissioner of Patents.

Applicant Compania Ron Bacardi S. A.

Ser. No. 349 825 Filed April 11, 1934 For Trade-Mark
Mailed Feb. 8, 1936

John Imirie, Munsey Build Washington D. C.

Responsible to paper filed January 24, 1936

The certified copy of the Cuban registration corresponding to the mark of this application has been entered of record.

Paragraph 4 of the statement should be amended in accordance with the registration data.

Otherwise, the application appears to be in condition for publication.

(Carta Blanca" etc.)

A.W.J.

RICHMOND, Examiner.

349 825-9.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed April 11, 1934

Serial No. 349,825 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action dated February 8, 1936, received.

In paragraph 4 of the statement, after "April 3rd, 1934" insert "registered November 28, 1935, No. 55,273."

Respectfully submitted,

COMPANIA RON BACARDI, SA.

By John Imirie, Attorney.

February 13, 1936

349,825-10.

Department of Commerce

United States Patent Office, Washington

John Imirie, Munsey Bldg., City.

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A. April 11, 1934, S. N. 349,825 in Class 49 (Carta Blanca has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Mark, approved February 20, 1905.

The mark will be published in the Official Gazette of Mar 17 1936

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before

one of the officers mentioned in section 2 of the act of February 20, 1905

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE,

Commissioner of Patents

349 825-11.

Opposition

Opposition No. 15648 Paper No. 8

Name, Compania Ron Bacardi, S. A.

Serial No. 349,825

Title, Rum

Filed April 11 1934

Opposition by Company Ron Daiquiri, S. A.

Decisions of

Ex'r of Interference, Dismissed as ind. Dated Jul 24 1935

Commissioner Dated

Court of Appeals Date

Remarks

349 825

Department of Commerce

United States Patent Office Washington

No. 349 825

Mailed Aug 6, 1936

LW

Compania Ron Bacardi, S. A.

Sir: Your application for Registration of Trade-mark (Carta Blanca Bacardi y Cia) Class 49 Registered Sept 1 1936 has been examined and allowed.

The Certificate of Registration will be issued, and forwarded to you, as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE

Commissioner of Patents

John, Imirie, Munsey Bldg., Washington D. C.

349 825-13.

Registered Sept. 1, 1936 Trade-Mark 338 241

United States Patent Office

Compania Ron Bacardi, S. A. Santiago, Cuba

Act of February 20, 1905

Application April 11, 1934. Serial No. 349,825

Carta Blanca

Bacardi y Cia

STATEMENT

To the Commissioner of Patents:—

Compania Ron Bacardi, S. A. a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30. Aguilera Baja Street, Santiago Republic of Cuba, has adopted and used the trade mark shown in the accompanying drawing, for Rum, in Class 49, Distilled Alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since 1887; and the words "Bacardi y Cia" since 1862.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon.

An application for registration of said trademark was filed in

Cuba on April 3rd, 1934, registered November 28, 1935, No. 55,273. Applicant is the owner of registrations No. 310,225.

John Imirie, whose postal address is Munsey Building, Washington, D. C. is designated, on whom process or notice of proceedings affecting the rights of ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C. his attorney with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By Luis J. Bacardi, Vice-President

(Letterhead of) Compania Ron Bacardi, S. A.

Santiago de Cuba, January 28th, 1937

Commissioner of Patents, Trade Mark Division, Washington,
D. C.

Dear Sir:—The undersigned hereby designates Stewart Maurice, whose postal address is 149 Broadway, New York City, on whom process or notice of proceedings affecting the right to ownership of trade mark 338241 registered to the undersigned on September 1st, 1936, brought under the laws of the United States may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA "RON BACARDI", S. A.

By J. M. Bosch, Vice-President.

349 825, 14

Classification Trade Mark
Class 49, Distilled Alcoholic Liquors

Contents:

Application O. K. paper Briefed.

1. Letter May 16 1934
2. Arndt, A Apr 29 1935
3. Letter May 10 1935
4. Letter & For reg. Cer. Jun 24 1936
5. Letter Feb 8 1936
6. Amdt. B/ Feb 13 1936
7. N. of P. Feb 21 1936
8. Opp. Brief (15648)
Opp. 15648 Dismissed, Jul 24 1936 (See No. 8)
9. Appt. of Re.

349 825-15

EXHIBIT G FOR PLAINTIFF.

390

Department of Commerce
United States Patent Office

To all Persons to whom these Presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the Trade-Mark Registered to Compania Ron Bacardi, S. A., August 4, 1936 Number 337,254.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord one thousand nine hundred and thirty-seven and the Independence of the United States of America the one hundred and sixty-second.

CONWAY P. COE

Commissioner of Patents

[SEAL]

Attest: D. E. Wilson,
Chief of Division.

T. M. Serial No. (Series of 1905)

349 822

Trade-mark No. 337 254 Registered Aug. 4, 1936.

Trade Marks

Class 49, Distilled Alcoholic Liquors

Act of Feb. 20, 1905.

Name Compania Ron Bacardi, S. A.

of Santiago de Cuba

State of Cuba

For Rum

Application filed complete Apr. 11, 1934.

Examined and passed for publication F. A. Richmond Apr. 30,
1936

Examined for registration F. A. Richmond Jul. 6, 1936

Notice of allowance Jul. 7, 1936

Examined for renewal Pg Renewed

Representative John Imirie Stewart Maurice

Attorney John Imirie Munsey Bldg. City

See paper No. 6

Trade mark;

Applicant is the owner of trade-mark registration No. 310,654.

Merchandise: Rum

Claims use since 1887.

Published in O. G., Mar. 26, 1936 U. S. Patent Office

PETITION, STATEMENT AND POWER OF ATTORNEY.

To the Commissioner of Patents;

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago de Cuba City, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing for Rum, in Class 49, Distilled Alcoholic Liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and request

that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905, as amended.

The Trade-Mark has been continuously used and applied to said goods in applicant's business since 1887, and the words "Bacardi y Cia", since 1862.

The Trade-Mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. Applicant is the owner of registrations No. 310,654, and No. 284,228.

An application for the registration of said trade-mark was filed in Cuba on April 3rd, 1934, and registered January 27, 1936, No. 55,526.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.

By Luis J. Bacardi, Vice-President
349 822-1.

DECLARATION

Republic of Cuba City and Province of Havana ss:

United States Consulate General

Luis J. Bacardi, being duly sworn, deposes and says that he is the Vice-President of the Company, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said Company is the owner of the Trade-Mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in

identical form or in any such near resemblance thereto as might be calculated to deceive; that an application for registration of said trade-mark has been filed in Cuba, on April 3rd, 1934; that the description and drawing presented truly represent the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

LUIS J. BACARDI.

Subscribed and sworn to before me at Havana City, Republic of Cuba, this 3rd day of April, 1934.

R. F. Washington

Vice Consul of the United States
of America

[CONSULAR SEAL]

349 822-2.

Department of Commerce
United States Patent Office Washington

Jen/F

Please find below a communication from the Examiner in charge of this application. Conway P. Coe Commissioner of Patents.

Applicant: Compania Ron Bacardi S. A.

Ser. No. 349 822

For Trade-mark

Mailed May 16, 1934.

John Imirie, Munsey Bldg., Washington, D. C.

Applicant is required to file a certified copy of the corresponding Cuban mark when registered. Paragraph 4 of the statement should then be changed in accordance with the registration data.

Ownership of registration No. 284,228 should be claimed in the statement.

A search of Class 49 fails to show that any trade-mark like applicant's has been registered for use on the same kind of goods.

A. W. JENNISON.

("Carta de Oro Bacardi y Cia.")

349 822-3.

In the United States Patent Office
In re Application Compania Ron Bacardi, S. A.
Trade-mark Filed Apr. 14, 1934
Serial No. 349,822. Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action of May 18, 1934, received.

Insert in the statement, "Applicant is the owner of registration No. 284,228".

Applicant has made application for registration of the trade-mark in Cuba, but because of the delay in the granting of registrations in that country, applicant is unable to supply a certified copy at this particular time.

It is understood that the registration will in due course issue, and when issued, a certified copy will be supplied.

Respectfully submitted.

COMPANIA RON BACARDI, S. A.,
By John Imirie, Attorney.
349 822-4.

April 29, 1935.

Department of Commerce
United States Patent Office, Washington

Jen/F

Please find below a communication from the Examiner in charge of this application.

CONWAY P. COE,
Commissioner of Patents.

Application: Compania Ron Bacardi, S. A.
Ser. No. 349 822 Filed April 11, 1934 For Trade-Mark
Mailed May 10, 1935.

John Imirie, Munsey Bldg., Washington, D. C.

Responsive to amendment filed April 29, 1935.

The application has been returned to the files pending the filing of a certified copy of the Cuban registration when issued. Para-

graph 4 of the statement should then be changed in accordance with the registration data.

(Carta de Oro Bacardi y Cia)

RICHMOND, Examiner.

349 822-5.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed, April 11, 1934.

Serial No. 349 822 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action of May 10, 1935, received.

In line 16, of the statement, after "1934" change the period to a comma and insert "and registration January 27, 1936, No. 55526".

A certified copy of applicant's Cuban registration is attached hereto.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By John Imirie, Attorney.

April 22, 1936.

349 822-6.

Doctor Antonio Reyes Hechavarria, Acting Director of Trade-Marks and Patents of the Commerce Department of the Republic of Cuba,

Certifies:

First: That in accordance with the records in this Office, it results: That on the twenty-seventh day of January, Nineteen Hundred and Thirty-Six, there was issued in favor of Compania Ron Bacardi, S. A., the certificate of registration number Fifty-five Thousand Five Hundred and Twenty-six, corresponding to a trade-mark known as "Carta de Oro Bacardi y Cia.", to distinguish rum, cognac, anisated, wines, beers and liquors of all kinds, the design of which is exactly the same as the one hereinafter affixed as follows:

Carta De Oro
Bacardi y Cia

Second: That the said trade-mark is at present in full force and legal effect.

And on petition of Dr. Carlos Garate Bru, in behalf of Compania Ron Bacardi, S. A., the present certificate is issued and approved by the Assistant-Secretary of the Department, at Havana, on the eighth day of the month of April, Nineteen Hundred and Thirty-Six.

DR. ANTONIO REYES H.

Approved: Dr. Alonso Padrol
Assistant Secretary.

Department of Commerce
Office States Patent Office, Washington

John Imirie, Munsey Bldg., City

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A., April 11, 1934, S. N. 349,822 in Class 49 (Carta de Oro) has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of May 26, 1936.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as

published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE

Commissioner of Patents.
349 822-9.

Department of Commerce
United States Patent Office, Washington
No. 349 822.

Mailed Jul. 9, 1936.

Compania Ron Bacardi, S. A.,

Sir: Your Application for Registration of Trade-Mark Class 49 (Carta de Oro) Registered Aug. 4, 1936 has been examined and allowed:

The Certificate of Registration will be issued and forwarded to you as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE,

Commissioner of Patents.

John Imirie, Munsey Bldg., City

439 822-10.

Registered Aug. 4-1936 Trade-Mark 337 254.

United States Patent Office

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application April 11, 1934, Serial No. 349,822.

Carta de Oro

Bacardi y Cia

STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at

No. 30 Aguilera Baja Street, Santiago de Cuba City, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trademark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905, as amended.

The trade-mark has been continuously used and applied to said goods in applicant's business since 1887; and the words "Bacardi y Cia" have been used since 1862.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. Applicant is the owner of registrations No. 3Lo,654 and No. 284,228.

An application for registration of said trademark was filed in Cuba on April 3, 1924, and registered January 27, 1936, No. 55,526.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney with full powers of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By Luis J. Bacardi, Vice-President.

Letterhead of Compania Ron Bacardi, S. A.

Santiago de Cuba, January 28th, 1937.

Commissioner of Patents, Trade-Mark Division, Washington,
D. C.

Dear Sir:—The undersigned hereby designates Stewart Maurice whose postal address is 149 Broadway, New York City, on whom

process or notice of proceedings affecting the right to ownership of trade mark No. 337 254 registered to the undersigned on August 4th, 1936, brought under the laws of the United States may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA RON BACARDI, S. A.,

By J. M. Bosch, Vice-President

349 822-11.

Classification Trade Marks

Class 49, Distilled Alcoholic Liquors

Contents:

Application O. K. papers, Briefed

1. Letter May 16, 1934
2. Amdt. A. Apr. 29, 1935
3. Letter May 10, 1935
4. Amdt B & for cert. Apr. 22, 1936
5. N. of P. May 1, 1936
6. Appt. of Rep.

349 822-12.

EXHIBIT H FOR PLAINTIFF.

390

Department of Commerce
United States Patent Office

To all Persons to whom these Presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the Trade Mark Registered to Compania Ron Bacardi, S. A., January 7, 1936 Number 331,460.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord one thousand nine hundred and thirty-seven and of the Independ-

ence of the United States of America the one hundred and sixty-second.

CONWAY P. COE

Commissioner of Patents.

[SEAL]

Attest: D. E. Wilson,
Chief of Division.

T. M. Serial No.

(Series of 1905)

359 538 *

Trade-mark No. 331 460. Registered Jan. 7, 1936.

Act of Feb. 20, 1905

Name Compania Ron Bacardi, S. A.

of Santiago De Cuba

State of Cuba

For Rum

Application filed complete: Dec. 21, 1934.

Examined and passed for publication F. A. Richmond Oct. 3, 1935.

Examined for registration F. A. Richmond Dec. 9, 1935

Notice of allowance Dec. 10, 1935.

Examined for renewal Pg Renewed Pg

Representative John Imirie Stewart Maurice.

Attorney John Imirie Munsey Bldg. City See paper No. 5

Trade-mark: The drawing is lined for gold.

Under Ten-Year Proviso.

Merchandise: Rum.

Claims use since 1889.

Published in O. G.

Oct. 29, 1935

U. S. Patent Office

PETITION AND STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, and located at Santiago de Cuba,

Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the package containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895, and 1892, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905, and such use has been exclusive.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was registered August 14, 1935, No. 54,839.

John Imirie, whose postal address is Munsey Building, Washington, D. C. is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By: Pedro E. Lay, Vice-President.

[SEAL]

359 538-1-

DECLARATION

Republic of Cuba, Province of Oriente,
Consulate of the United States of America

At Santiago de Cuba, ss:

Pedro E. Lay, being duly sworn, deposes and says that he is Vice-President of the company, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said company is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive that an application for registration of said trade-mark has been filed in Cuba, on October 27, 1934; that the description and drawing presented truly represent the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

[SEAL]

PEDRO E. LAY.

Subscribed and sworn to before me, at Santiago de Cuba, Cuba, this 21st day of November, 1934. Harry W. Story,

Vice-Consul of the United States of America

[CONSULAR SEAL]

359 538-2.

Department of Commerce

Jen/f.

United States Patent Office, Washington

Please find below a communication from the Examiner in charge of this application.

CONWAY P. COE,

Commissioner of Patents.

Applicant: Compania Ron Bacardi, S. A.

Ser. No. 359 538 Filed Dec. 21, 1934 For Trade-Mark

Mailed Mar. 9, 1935.

John Imirie, Munsey Bldg., Washington, D. C.

Applicant is required to file a certified copy of the corresponding

mark when registered in Cuba. Paragraph 3 of the statement should then be changed in accordance with the registration data.

Paragraph 2 of the statement is not understood, particularly in view of the alleged date of use of 1901 of the mark in its present form.

The drawing is lined for the color gold and it should be made to so appear in the statement.

Applicant should disclaim all wording with the exception of "Carta de Oro", "Bacardi", "Bacardi y Cia", and "Establecidos en 1862".

Registration is refused in view of the following registered marks:

284,224 Compania Ron Bacardi, S. A., June 16, 1931;
284,225 Compania Ron Bacardi, S. A., June 16, 1931;
284,228 Compania Ron Bacardi, S. A., June 16, 1931;
302,916 Compania Ron Bacardi, S. A., May 2, 1933;
310,916 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934;
310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

359 538/2

359 538-3.

If the applicant is the present owner of these registrations, it should be made to so appear in the statement.

F. A. RICHMOND,
Examiner.

("Carta de Oro" etc.)

A. W. J.

359 538-4.

Transcript of Record of District Court.

In The United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed, December 21, 1934

Serial No. 359 538 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action of March 9, 1935, received.

In the statement, change "1901", to "1889"; line 13, after "mark" insert "with the exception of the medal awarded in 1900"; after line 14, insert: "The drawing is lined to represent the color gold".

Applicant is the owner of the following registrations;

284,224 Compania Ron Bacardi, S. A., June 16, 1931;

284,225 Compania Ron Bacardi, S. A., June 16, 1931;

284,228 Compania Ron Bacardi, S. A., June 16, 1931;

302,916 Compania Ron Bacardi, S. A., May 2, 1933;

310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934;

310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

In the statement, line 16, after "1934" change the period to a comma and insert "and was registered August 14, 1935, No. 54,839".

A certified copy of the Cuban registration is filed herewith.

Remarks:

Since the mark is claimed under the ten year clause of the Act, it is not believed necessary to disclaim the wording as suggested by the Examiner.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By John Imirie, Attorney.

September 27, 1935.

359 538-5.

UNITED STATES



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 23 Aguillera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1906. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1890. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1890, 1893, and 1894, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1906, and such use has been exclusive.

The drawing is filed to represent the goods sold.

Applicant is the owner of the following trademarks: 294,226 Compania Ron Bacardi, S. A.,

June 16, 1931; 294,226 Compania Ron Bacardi, S. A., June 16, 1931; 302,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,000 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,003 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,003 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,003 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,003 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was registered August 14, 1935, No. 54,839.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full power of substitution and revocation, and to make amendments and amendments therein, to execute the certificate, and to transact all business with the Patent Office connected therewith.

COMPAÑIA RON

PRIMO R. LAR

Vice Pres

Doctor Ramon Alonso y Padrol, Director of Trade-Marks & Patents of the Commerce Department of the Republic of Cuba

Certifies:

First: That in accordance with the records in this office, it is shown: That on the fourteenth day of August, Nineteen Hundred and Thirty-Five, there was issued in favor of Compania Ron Bacardi, S. A., the certificate of registration number Fifty-four Thousand Eight Hundred and Thirty-Nine, corresponding to a trade-mark constituted by a label formed by the joining of two national marks granted by certificates numbers 31605 and 42433, under the name of "Carta de Oro", to distinguish rum, the design of which is exactly the same as the one hereinafter affixed as follows:

[Facsimile of Label]

Second: That the said trade-mark is at present in full force and legal effect. And on petition of Dr. Carlos Garate Bru, in behalf of Compania Ron Bacardi, S. A., the present certificate is issued, approved by the Assistant Secretary of the Department, at Havana, on the eleventh day of September, Nineteen Hundred and Thirty-Five.

DR. R. ALONSO PADROL.

Approved: Carlos M. Pelaez y Cossio, Assistant-Secretary.

359 538-6-1/2.

In the United States Patent Office

In re application Compania Ron Bacardi, S. A.,

Trade-Mark Filed, December 21, 1934

Serial No. 359 538 Room 2608

Hon. Commissioner of Patents; Washington, D. C.

Sir: Please amend as follows:

In the amendment to line 13 of the statement, after "mark" erase "with the exception of the medal awarded in 1900" and substitute the following: "with the exception of the medals awarded in 1900, 1895, and 1892".

This amendment is made as a result of an oral interview had with the Examiner, and is believed to place the application in condition for publication.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,
by John Imirie Attorney.

October 3, 1935.

359 538-7.

Department of Commerce
United States Patent Office Washington

LW'

John Imirie, Munsey Bldg., Washington, D. C.

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A., Dec. 21, 1934, S N 359 538, Class 49 (Carta de Oro etc.), has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of Oct. 29, 1935.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE

Commissioner of Patents.

359 538-8.

Department of Commerce
United States Patent Office Washington

No. 359 538.

Mailed Dec. 11, 1935

Compania Ron Bacardi, S. A.

Sir: Your Application for Registration of Trade-mark Class 49
(Carta de Oro etc.) Registered.

Jan. 7, 1936 has been examined and allowed.

The Certificate of Registration will be issued and forwarded
to you as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE

Commissioner of Patents.

John Imirie, Munsey Bldg., Washington, D. C.

359 538-9.

Registered Jan. 7, 1936 Trade-Mark 331 460

United States Patent Office

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1905

Application December 21, 1934, Serial No. 359,538

[Facsimile of Label]

STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 32 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905. The trade-mark in the present form has been continuously used and applied to said

UNITED STATES PATENT

Compania Ron Bacardi, S. A., Santiago, Cuba

Act of February 20, 1906

Application December 21, 1904, Serial No. 25789



STATEMENT

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba and located at Santiago de Cuba, Cuba, and doing business at 33 Aguilera Baja Street, Santiago de Cuba, Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for RUM, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1906. The trade-mark in the present form has been continuously used and applied to said goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1906, and 1907, have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1906, and such use has been exclusive.

The drawing is lined to represent the color gold.

Applicant is the owner of the following registrations: 284,234 Compania Ron Bacardi, S. A.,

June 16, 1931; 284,235 Compania Ron Bacardi, S. A., June 16, 1931; 284,236 Compania Ron Bacardi, S. A., June 16, 1931; 282,916 Compania Ron Bacardi, S. A., May 2, 1933; 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,656 Compania Ron Bacardi, S. A., Mar. 6, 1934; 310,657 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trade-mark was filed in Cuba on October 27, 1934, and was registered August 14, 1935, No. 54,839.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.
By PEDRO E. LAY,
Vice President.

goods in applicant's business since 1889. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

The individual features of the mark with the exception of the medals awarded in 1900, 1895 and 1892; have been in actual use as a trade-mark by the applicant for ten years next preceding February 20, 1905 and such use has been exclusive.

The drawing is lined to represent the color gold.

Applicant is the owner of the following registrations:

- 284,224 Compania Ron Bacardi, S. A., June 16, 1931;
- 284,225 Compania Ron Bacardi, S. A., June 16, 1931;
- 284,228 Compania Ron Bacardi, S. A., June 16, 1931;
- 302,916 Compania Ron Bacardi, S. A., May 2, 1933;
- 310,650 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,652 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,653 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,654 Compania Ron Bacardi, S. A., Mar. 6, 1934;
- 310,655 Compania Ron Bacardi, S. A., Mar. 6, 1934.

An application for registration of said trademark was filed in Cuba on October 27, 1934, and was registered August 14, 1935, No. 54,839.

John Imirie, whose postal address is Munsey Building, Washington, D. C., is designated as applicant's representative on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, whose postal address is Munsey Building, Washington, D. C., its attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By: Pedro E. Lay, Vice-President.

Letterhead of Compania Ron Bacardi, S. A.

Santiago de Cuba, January 28th, 1937.

Commissioner of Patents, Trade Mark Division, Washington, D. C.

Dear Sir:—The undersigned hereby designates Stewart Maurice whose postal address is 149 Broadway, New York City, on whom process or notice of proceedings affecting the right to ownership of trade-mark No. 331 460 registered to the undersigned on January 7th, 1936, brought under the laws of the United States may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA "RON BACARDI", S. A.,

By J. M. Bosch, Vice-President.

359 538-10.

Classification Trade Marks
Class 49, Distilled Alcoholic Liquors

Contents:

Application O. K. papers Briefed

1.—Rejection Mar. 9, 1935

2.—Amdt. A. & For Reg Cert Sep. 27, 1935

3.—Amdt. B. Oct. 3, 1935

4.—N. of P. Oct. 4, 1935

5.—Appt. of Rep.

359 538-11.

EXHIBIT I FOR PLAINTIFF.

390

Department of Commerce
United States Patent Office

To all Persons to whom these Presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of the office of the File Wrapper and Contents, in the matter

of the Trade Mark Registered to Compania Ron Bacardi, S. A.
September 3, 1935 Number 327,649

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-second day of July, in the year of our Lord one thousand nine hundred and thirty-seven and of the Independence of the United States of America the one hundred and sixty-second.

CONWAY P. COE,

[SEAL]

Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division.

T. M. Serial No.
(Series of 1905)
349 823

Bacardi y Cia
Trade Mark No. 327 649
Registered Sep 3 1935

Trade Marks

Class 49, Distilled Alcoholic Liquors
Act of Feb 20, 1905

Name Compania Ron Bacardi, S. A.
Of Santiago de Cuba
State of Cuba
For Rum

Application filed complete Apr 11 1934
Examined and passed for publication F. A. Richmond Jun. 6
1935

Examined for registration F. A. Richmond Aug 5 1935
Notice of Allowance Aug 6 1935

Examined for renewal Renewed: Gf

Representative John Imirie Stewart Maurice

Attorney John Imirie Munsey Bldg City See paper No. 6

Trade mark: Under Ten-Year Proviso.

Merchandise: Rum

Claims use since 1862

Published in O. G. Jul 2-1935 U. S. Patent Office

Application No. 349 825

PETITION, STATEMENT AND POWER OF ATTORNEY

To the Commissioner of Patents:

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30, Aguilera Baja Street, Santiago de Cuba City, Republic of Cuba, has adopted and used the trade-mark shown in the accompanying drawing, for Rum, in Class 49, Distilled Alcoholic Liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and request that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905, as amended.

The mark has been in actual use as a trade mark by the applicant and applicant's predecessors from whom title was derived for ten year next preceding February 20, 1905, to wit, 1862, and such use has been exclusive.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. Applicant is the owner of registration No. 310,654.

An application for registration said trademark was filed in Cuba on April 3rd, 1934, registered May 24, 1935, No. 44,339.

John Imirie, whose postal address is Munsey Building, Washington, D. C. is designated on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C. his attorney with full power of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificates and to transact all business in the Patent Office connected therewith.

COMPANIA RON BACARDI, S. A.,

By: Luis J. Bacardi, Vice-President

349 823-1.

DECLARATION

Republic of Cuba,

City and Province of Havana ss:

United States Consulate General.

Luis J. Bacardi, being duly sworn, deposes and says that he is the Vice-President of the Company, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said Company is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trademark in the United States, either in identical form or in any such near resemblance thereto as might be calculated as deceive; that an application for registration of said trade-mark has been filed in Cuba on April 3, 1934; that the description and drawing presented truly represent the trade-mark sought to be registered, and that the specimens shows the trade-mark as actually used upon the goods.

LUIS J. BACARDI

Subscribed and sworn to before me at Havana, Republic of Cuba, this third day of April, 1934.

R. F. Washington

Vice-Consul of the United States of America

[CONSULAR SEAL]

349 823-a.

Department of Commerce

United States Patent Office Washington

Jen/F

Please find below a communication from the Examiner in charge of this application. Conway P. Coe, Commissioner of Patents.

Applicant: Compania Ron Bacardi, S. A.

Ser. No. 349 823 Filed Apr 11 1934 For Trade-Mark

Mailed May 15, 1934

John Imirie, Munsey Bldg., Washington, D. C.

Applicant is required to file a certified copy of the correspond-

ing Cuban mark when registered. Paragraph 4 of the statement should then be changed in accordance with the registration data.

A search of Class 49 fails to show that any trade mark like applicant's has been registered for use on the same kind of goods.

A. W. JENNISON

349 823-2.

("Bacardi y Cia")

In The United States Patent Office
In re application Compania Ron Bacardi, S. A.
Trade Mark Filed April 11, 1934
Serial No. 349 823 Room 2608

Hon. Commissioner of Patents, Washington D. C.

Sir: Official action of May 16, 1935, received.

Applicant has made application for registration of trade-mark in Cuba, but because of the delay in the granting of registrations in that country, applicant is unable to supply a certified copy at this particular time.

It is understood that the registration will in due course issue, and when issued, a certified copy will be supplied.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By: John Imirie, Attorney

349 823-4.

April 29, 1935.

Department of Commerce
United States Patent Office Washington

Jen/f

Please find below a communication from the Examiner in charge of this application.

CONWAY P. COE,

Commissioner of Patents.

For:

Applicant: Compania Ron Bacardi, S. A.

Ser. No. 349 823 Filed Apr 11 1934 Mailed May 10 1935

John Imirie, Munsey Bldg., Washington, D. C.

Responsive to letter filed April 29, 1935.

The application has been returned to the files pending the filing

of a certified copy of the Cuban registration when issued. Paragraph 4 of the statement should then be changed in accordance with the registration data.

RICHMOND, Examiner

("Bacardi & Cia")

A. W. J.

349 823-5.

In The United States Patent Office

In re application Compania Ron Bacardi, S. A.

Trade-Mark Filed: April 11, 1934

Serial No. 349 823 Room 2608

Hon. Commissioner of Patents, Washington, D. C.

Sir: Official action of May 10, 1935, received.

Add the following to Paragraph 4 of the statement registered May 24, 1935, No. 44,339"

A certified copy of the Cuban registration is filed herewith.

Respectfully submitted,

COMPANIA RON BACARDI, S. A.,

By John Imirie, Attorney

June 4, 1936.

349 823-6.

Doctor Ramon Alonso y Padrol, Director of Trade-Mark and Patents of the Commerce Department of the Republic of Cuba.

Certifies:

First: That in accordance with the records in this Office, it is shown:—That on the fourteenth day of February, Nineteen Hundred and Thirty-Five, there was issued in favor of Compania Ron Bacardi, S. A., the certificate of registration number Fifty-four Thousand Three Hundred and Twenty-nine, corresponding to a trade-mark under the name of "Bacardi y Cia", to distinguish rum, cognac, anisated, beers, wines and liquors of all kinds, the design of which is exactly the same as the one hereinafter affixed: Bacardi y Cia.

Second: That the said trade-mark is at present in full force and

legal effect. And on petition of Dr. Carlos Garate Bru, on behalf of Compania Ron Bacardi, S. A., the present certificate is used, approved by the Assistant Secretary of the Department, at Havana, on the twenty-four day of May nineteen hundred and thirty-five.

R. ALONSO PADROL

Approved: Juan Rodriguez Arango

Assistant Secretary

349 823-7.

Department of Commerce
United States Patent Office, Washington

John Imirie, Munsey Bldg., Washington, D C

The application for the Registration of a Trade-Mark filed by Compania Ron Bacardi, S. A., filed April 11, 1935, S N 349 823, in Class 49, has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of July 2-1935.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE,

Commissioner of Patents.

329 823-9.

Department of Commerce
United States Patent Office, Washington

No. 349 824 Mailed: Aug 7, 1935

Compania Ron Bacardi, S. A.

Sir:—Your Application for Registration of Trade-Mark (Bacardi y Cia) In Class 49 Registered Sept. 3 1935 has been examined and allowed.

The Certificate of Registration will be issued, and forwarded to you, as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE,

Commissioner of Patents.

John Imirie, Munsey Bldg., Wn. D. C.

349 823-10.

Registered Sept. 3 1936 Trade Mark 327 649

United States Patent Office

Compania Ron Bacardi, S. A., Santiago de Cuba

Act of February 20, 1905

Application April 11, 1934, Serial No. 349,823

Bacardi y Cia

STATEMENT

To the Commissioner of Patents:—

Compania Ron Bacardi, S. A., a company duly organized under the laws of the Republic of Cuba, located and doing business at No. 30 Aguilera Baja Street, Santiago, Republic of Cuba, has adopted and used the trade mark shown in the accompanying drawing, for Rum, in Class 49, Distilled Alcoholic Liquors, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and request that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The mark has been in actual use as a trade-mark by the applicant and applicant's predecessors from whom title has derived for

ten years next preceding February 20, 1905, to wit, 1862, and such use has been exclusive.

The trade-mark is applied or affixed to the bottles or to the boxes containing the same, by means of labels having the mark printed thereon. Applicant is the owner of registration No. 310,654.

An application for registration of said trademark was filed in Cuba on April 3rd, 1934, registered May 24, 1935, No. 44,339.

John Imirie, whose postal address is Munsey Building, Washington, D. C. is designated, on whom process or notice of proceedings affecting the right to ownership of said trade-mark brought under the laws of the United States may be served.

The undersigned hereby appoints John Imirie, of Munsey Building, Washington, D. C., his attorney with full power of substitution and revocation, to prosecute this application for registration, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent office connected therewith.

COMPANIA RON BACARDI, S. A.,

By: Luis J. Bacardi, Vice-President

Letterhead of Compania Ron Bacardi, S. A.

Santiago de Cuba, January 28th, 1937

Commissioner of Patents, Trade-Mark Division, Washington,
D. C.

Dear Sir:—The undersigned hereby designates Stewart Maurice, whose postal address is 149 Broadway, New York City, on whom process or notice of proceedings affecting the right to ownership of trade mark No. 327 649 registered to the undersigned on September 3rd, 1935, brought under the laws of the United States may be served. This designation cancels and supersedes any and all prior designations made by the undersigned.

Respectfully,

COMPANIA RON BACARDI, S. A.,

By: J. M. Bosch, Vice-President.

349 823-11.

Classification Trade Mark
Class 49, Distilled Alcoholic Liquors

Contents:

Application O. K. papers, Briefed

1. Letter May 16 1934
2. Letter Apr 29 1935
3. Letter May 10 1935
4. Amdt. A. & For reg. Cert. Jun 4 1935
5. N. of P. Jun 7 1935
6. Appt. of Rep.

349 823-12.

EXHIBIT J FOR PLAINTIFF.

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come,

Greeting:

This is to certify that the annexed is a true and correct copy from the records of this office of the Certificate of Registration, Statement and Facsimile in the matter of trade mark "Carta Blanca"—"Ron Bacardi Superior" and design, registered to Compania Ron Bacardi, S. A. of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, on September 27, 1935, under certificate No. 3919, for Rhum.

The Certificate of Registration was granted for the term of ten years, and so far as is disclosed by the records of this office said certificate is still in full force and effect.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico, at the City of San Juan, this twenty-ninth day of July, in the year of our Lord, one thousand nine hundred and thirty-seven.

[SEAL]

M. ASHFORD
Acting Executive Secretary

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come, Greeting:

This is to certify that by the records of the Office of the Executive Secretary of Puerto Rico it appears that Compania Ron Bacardi S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, did, on the 10th day of April, 1935, duly file in said office an application for Registration of a certain Trade Mark shown in the facsimile for the goods specified in the statement, copies of which facsimile and statement are hereto annexed, and duly complied with the requirement of the law in such case and provided, and with the regulations prescribed by the Executive secretary of Puerto Rico.

And, upon due examination, it appearing that the said applicant is entitled to have said Trade Mark registered under the law, the said Trade Mark has been duly Registered this day in the office of the Executive Secretary of Puerto Rico, to compania Ron Bacardi S. A., its successors or assigns.

This certificate shall remain in force for ten years, unless sooner terminated by law.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico at the City of San Juan, this twenty-seventh day of September, in the year of our Lord, one thousand nine hundred and thirty-five.

G. GALLARDO

[SEAL]

Executive Secretary of Puerto Rico.

To the Executive Secretary of Puerto Rico:—

Compania Ron Bacardi, S. A., a corporation duly organized under the laws of the Republic of Cuba, domiciled at Aguilera Baja Street No. 30, at the City of Santiago de Cuba, Republic of Cuba, has adopted and used the trade-mark which appears in the accompanying facsimile to distinguish rum, in Class 49, Distilled Alcoholic Liquors, and it accompanies ten facsimiles which repre-

sent the trade-mark such as is at present used in the said articles, and asks that the same be registered at the Office of the Executive Secretary of Puerto Rico in accordance with the provisions of Law No. 66, approved July 28, 1933.

Petitioner asks for no protection for the exclusive use of the words "Philadelphia-1876-Ron-Superior-de-Establecidos en 1862-Santiago de Cuba y Graduacion 44-5".

The trade-mark has constantly been used and applies to said articles in petitioner's business in Puerto Rico since 1893.

The trade-mark is applied to articles or to the packages or containers, placing on them a label on which the trade-mark appears, or in any other form that may be considered adequate and convenient.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay, Vice-President

[SEAL OF THE CORPORATION]

GASTA CLARCA SUPERIOR

Philadelphia
1876

Ron

Bacardi Superior

DE

BACARDI Y CIA

ESTABLECIDO EN 1862

SANTIAGO DE CUBA

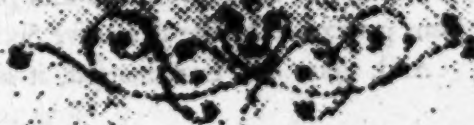


EXHIBIT K FOR PLAINTIFF.

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come,

Greetings:

This is to certify that the annexed is a true and correct copy from the records of this Office of the Certificate of Registration, Statement and Facsimile in the matter of trade mark "Bacardi", registered to Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, on September 27, 1935, under certificate No. 3916, for Rum.

The Certificate of Registration was granted for the term of Ten Years, and so far as is disclosed by the records of this office said certificate is still in full force and effect!

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico, at the City of San Juan, this twentieth day of July, in the year of our Lord, one thousand nine hundred and thirty-seven.

M. ASHFORD

Acting Executive Secretary.

[SEAL]

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come,

Greetings:

This is to certify that by the records of the Office of the Executive Secretary of Puerto Rico it appears that Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, did, on the 10th day of April, 1935, duly file in said Office an application for Registration of a certain Trade Mark shown in the facsimile for the goods specified in the statement, copies of which facsimile and statement are hereto annexed, and duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Executive Secretary of Puerto Rico.

And, upon due examination, it appearing that the said appli:

cant is entitled to have said Trade Mark registered under the law, the said Trade Mark has been duly Registered this day in the Office of the Executive Secretary of Puerto Rico, to Compania Ron Bacardi, S. A., its successors or assigns.

This certificate shall remain in force for ten years, unless sooner terminated by law.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico at the City of San Juan, this twenty-seventh day of September, in the year of our Lord, one thousand nine hundred and thirty-five.

C. GALLARDO

Executive Secretary of Puerto Rico

[SEAL]

To the Executive Secretary of Puerto Rico:

Compania Ron Bacardi, S. A., a corporation duly organized under the laws of the Republic of Cuba, domiciled at Aguilera Baja Street, No. 30, at the City of Santiago, de Cuba, Republic of Cuba, has adopted and used the trade-mark which appears in the accompanying facsimile, to distinguish Rum, in Class 49, Distilled Alcoholic Liquors, and it accompanies ten facsimiles representing the trade-mark such as is actually in use in the said articles, and asks that the same be registered in the Office of the Executive Secretary of Puerto Rico in accordance with the provisions of Law No. 66, approved July 28, 1923.

The trade-mark has constantly been used and applied to said articles in the business of the petitioner in Puerto Rico, since 1893.

The trade-mark is applied to articles, packages, or containers, by placing on them a label on which the trade-mark appears, or in any other form that may be considered adequate or convenient.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay, Vice-President

[SEAL OF THE CORPORATION]

[Facsimile]

BACARDI

EXHIBIT L FOR PLAINTIFF.**The People of Puerto Rico
Office of the Executive Secretary**

To all whom these Presents shall come, Greeting:

This is to certify that the annexed is a true and correct copy from the records of this Office of the Certificate of Registration, Statement and Facsimile in the matter of trade-mark consisting of the representation of a bat, registered to Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, on September 27, 1935, under certificate No. 3917, for Rum.

The Certificate of Registration was granted for the term of ten years, and so far as is disclosed by the records of this Office said certificate is still in full force and effect.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico, at the City of San Juan, this twenty-ninth day of July, in the year of our Lord, one thousand nine hundred and thirty-seven.

[SEAL]

M. ASHFORD
Acting Executive Secretary

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come:— Greeting:

This is to certify that by the records of the Office of the Executive Secretary of Puerto Rico it appears that Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, did, on the 10th day of April, 1935, fully file in said office an application for Registration of a certain Trade Mark shown in the facsimile for the goods specified in the statement, copies of which facsimile and statement are hereto annexed, and duly complied with the requirements of the laws in such case made and provided, and with the regulations prescribed by the Executive Secretary of Puerto Rico.

And, upon due examination, it appearing that the said applicant is entitled to have said Trade Mark registered under the law, the said Trade Mark has been duly Registered this day in the Office of the Executive Secretary of Puerto Rico, to Compania Ron Bacardi S. A., its successors or assigns.

This certificate shall remain in force, for ten years, unless sooner terminated by law.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico at the City of San Juan, this twenty-seventh day of September, in the year of our Lord, one thousand nine hundred and thirty-five.

C. GALLARDO

Executive Secretary of Puerto Rico

[SEAL]

To the Executive Secretary of Puerto Rico:

Compania Ron Bacardi, S. A., a corporation duly organized under the laws of the Republic of Cuba, domiciled at Aguilera Baja Street No. 30, at the City of Santiago de Cuba, Republic of Cuba, has adopted and used the trade-mark which appears in the accompanying facsimile, to distinguish Rum, in Class 49, Distilled Alcoholic Liquors, and it accompanies ten facsimiles representing the trade-mark such as is at present used in the said articles, and asks that the same be registered in the Office of the Executive Secretary of Puerto Rico in accordance with the provisions of Law No. 66 approved July 28, 1923.

The trade-mark has been used and constantly applied to said articles in the business of the petitioner in Puerto Rico since 1893.

The trade-mark is applied to the articles or to the packages or containers by placing on them a label on which the trade-mark appears, or in any other form that may be considered adequate and convenient.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay, Vice-President.

[SEAL OF THE CORPORATION]

[MEMORANDUM. Illustration of trade-mark, bat in a circle, is not here reproduced as it appears printed at page 190 of this record. A. I. CHARRON, *Clerk.*]

EXHIBIT M FOR PLAINTIFF.

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come, Greeting:

This is to certify that the annexed is a true and correct copy from the records of this Office of the Certificate of Registration, Statement and Facsimile in the matter of trade mark "Carta de Oro"—"Ron Bacardi, Superior" and design, registered to Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, on September 27, 1935, under certificate No. 3918, for Rum.

The Certificate of Registration was granted for the term of Ten Years, and so far as is disclosed by the records of this Office said certificate is still in full force and effect.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico, at the City of San Juan, this twenty-ninth day of July, in the year of our Lord, one thousand nine hundred and thirty-seven.

M. ASHFORD

[SEAL]

Acting Executive Secretary of Puerto Rico.

The People of Puerto Rico
Office of the Executive Secretary

To all whom these Presents shall come: Greeting:

This is to certify that by the records of the office of the Executive Secretary of Puerto Rico it appears that Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, a corporation organized under the laws of the Republic of Cuba, did, on the 10th day of April, 1935, duly filed in said Office an application for Registration of a certain Trade Mark shown in the facsimile for the goods specified in the statement, copies of which facsimile and statement are

hereto annexed, and duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Executive Secretary of Puerto Rico.

And, upon due examination, it appearing that the said applicant is entitled to have said Trade Mark registered under the law, the said Trade Mark has been duly Registered this day in the Office of the Executive Secretary of Puerto Rico, to Compania Ron Bacardi, S. A., its successors or assigns.

This certificate shall remain in force for Ten Years, unless sooner terminated by law.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Puerto Rico at the City of San Juan, this twenty-seventh day of September, in the year of our Lord, one thousand nine hundred and thirty-five.

C. GALLARDO

Executive Secretary of Puerto Rico.

[SEAL]

To the Executive Secretary of Puerto Rico:

Compania Ron Bacardi, S. A., a corporation duly organized under the laws of the Republic of Cuba, domiciled at Aguilera Baja, Street No. 30, at the City of Santiago de Cuba, Republic of Cuba, has adopted and used the trade-mark which appears in the accompanying facsimile to distinguish Rum, in Class 49, Distilled Alcoholic Liquors, and it accompanies ten facsimiles which represent the trade-mark such as is at present used in the said articles, and asks that the same be registered at the Office of the Executive Secretary of Puerto Rico in accordance with the provisions of Law No. 66, approved July 28, 1923.

Petitioner asks for no protection for the exclusive use of the words "Philadelphia-1876-Superior-de-Establecidos en 1862, Santiago de Cuba y Graduacion 44-5".

The trade-mark has constantly been used and applied to said articles in petitioner's business in Puerto Rico since 1893.

The trade-mark is applied to articles or to the packages or containers, placing on them a label on which the trade-mark appears,

or in any other form*that may be considered adequate and convenient.

COMPANIA RON BACARDI, S. A.,

By Pedro E. Lay, Vice-President.

[SEAL OF CORPORATION] _____

[MEMORANDUM. Illustration of label is not here reproduced as it appears printed at page 261 of this record. A. I. CHARRON, Clerk.]

EXHIBIT N FOR PLAINTIFF.

Treasury Department

Federal Alcohol Administration Division

Washington, July 16 1937

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed copies are true and exact copies of

Certificate of approval of Labels of Domestically Bottled Distilled Spirits, issued on May 18, 1937, to Bacardi Corporation of America, of San Juan, Puerto Rico, covering a brand label and strip label for Ron Superior Puerto Rican Rum;

and

Rectifier's Basic Permit, No. R-542, issued, under the Federal Alcohol Administration Act and Regulations, to Bacardi Corporation of America on November 23, 1935, and amended on March 28, 1936, to show address as Edificio La Colectiva", Marina Street, San Juan, Puerto Rico, said permit authorizing said permittee to engage in the business of rectifying and blending distilled spirits and wine, and, while so engaged, to sell, offer, and deliver for sale, contract to sell and ship, in interstate and foreign commerce, at said address, and at branch offices and other places of business, the distilled spirits and wine so rectified or blended;

and

Warehousing and Bottling Basic Permit, No. BR-542, issued

under the Federal Alcohol Administration Act and Regulations, to Bacardi Corporation of America on November 23, 1935, and amended on March 28, 1936, to show address as Edificio "La Colectiva" Marina Street, San Juan, Puerto Rico, said permit authorizing said permittee to engage, at that address and at that address only, in the business of warehousing and bottling distilled spirits, and, while so engaged, to sell, offer and deliver for sale, contract to sell and ship, in interstate and foreign commerce, at said address and at branch offices and other places of business, the distilled spirits so warehoused and bottled;

on file in the records of the Federal Alcohol Administration in Washington, District of Columbia.

In witness whereof, I have hereunto set my hand, and caused the Seal of the Federal Alcohol Administration to be affixed on the day and year first above written.

A. F. ALEXANDER,
Administrator.

[SEAL]

Form L 5 Treasury Department
Federal Alcohol Administration

February, 1936

Certificate of Approval of Labels of Domestically Bottled
Distilled Spirits

Date: May 18, 1937.

Pursuant to the application of Bacardi Corporation of America, whose address is San Juan, Puerto Rico, the labels affixed to the reverse side hereof covering Carta de Plata (brand name) Puerto Rican Rum (class and type of distilled spirits) are hereby approved.

Labels identical with those affixed to the reverse side hereof except in respect to size, and statement of net contents appearing thereon in conformity with Section 37 of Regulations 5, are also approved for use on bottles which conform to the requirements of Article VII of Regulations 5.

A separate label, known as the government label, prepared in conformity with circular letter FA-41, and containing the mandatory label information required by Section 32(c) of Regulations 5, (may, but need not) be used on bottles bearing the labels hereby approved.

Distilled spirits in bottles bearing the labels hereby approved and the proper government label, if required, are authorized to be removed from the plant where bottled.

This certificate shall not operate to relieve any person from liability for any violation of the Federal Alcohol Administration Act, or regulations thereunder resulting from the failure of any bottle bearing the labels herein approved, or the contents of such bottle, to conform to the statements and representations made on such labels.

W. A. ALEXANDER, Administrator, RWB
Federal Alcohol Administration, Washington, D. C.

Permit No. R-542

Rectifier's Basic Permit

[Under the Federal Alcohol Administration Act and Regulations]

Bacardi Corporation of America,
Edificio "La Colectiva" Marina Street, San Juan, Puerto Rico.

Pursuant to application dated November 19, 1935, you are hereby authorized and permitted to engage, at the above address, in the business of rectifying and blending distilled spirits and wine, and, while so engaged, to sell, offer and deliver for sale, contract to sell and ship, in interstate and foreign commerce, at said address, and at branch offices and other places of business, the distilled spirits and wine so rectified or blended.

This permit is conditioned upon compliance by you with sections 5 and 6 of the Federal Alcohol Administration Act and all other provisions thereof; the Twenty-first Amendment and laws relating to the enforcement thereof; all laws of the United States relating to distilled spirits, wine, and malt beverages, including

taxes with respect thereto; all applicable regulations made pursuant to law which are now, or may hereafter be, in force; and the laws of all States in which you engage in business.

This basic permit is effective from the date hereof and will remain in force until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated, as provided by law and regulations.

This permit is not transferable.

F. C. HOYT, Administrator, N.C.F.

Federal Alcoholic Administration.

Dated: November 23, 1935.

This permit amended March 28, 1936, to show address as Edificio "La Colectiva" Marina Street, San Juan, Puerto Rico, in lieu of 946-964 North Delaware Avenue, Philadelphia, Pennsylvania.

N. C. FLANERY

Head, Permit Division

Permit No. BR-542

Warehousing and Bottling Basic Permit

[Under the Federal Alcohol Administration Act and Regulations]

Bacardi Corporation of America,

Edificio "La Colectiva" Marina Street, San Juan, Puerto Rico

Pursuant to application dated November 19, 1935, you are hereby authorized and permitted to engage, at the above address and at that address only, in the business of warehousing and bottling distilled spirits, and, while so engaged, to sell, offer and deliver for sale, contract to sell and ship, in interstate and foreign commerce, at said address (es) and at branch offices and other places of business, the distilled spirits so warehoused and bottled.

This permit is conditioned upon compliance by you with sections 5 and 6 of the Federal Alcohol Administration Act and all other provisions thereof; the Twenty-first Amendment and laws

relating to the enforcement thereof; all laws of the United States relating to distilled spirits, wine, and malt, beverages, including taxes with respect thereto; all applicable regulations made pursuant to law which are now, or may hereafter be, in force; and the laws of all States in which you engage in business.

This basic permit is effective from the date hereof and will remain in force until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated, as provided by law and regulations.

This permit is not transferable.

F. C. HOYT, Administrator, H.C.F.

Federal Alcohol Administration.

Dated: November 23, 1935.

This permit amended March 28, 1936, to show address as Edificio "La Colectiva" Marina Street, San Juan, Puerto Rico, in lieu of 946-964 North Delaware Avenue, Philadelphia, Pennsylvania.

H. C. FLANERY

Head, Permit Division.

EXHIBIT N-1 FOR PLAINTIFF.



Produced in Puerto Rico by Special Authority and under the supervision of
COMPANIA RON BACARDI, S.A. SANTIAGO DE CUBA

SOLE DISTRIBUTORS IN U.S.A. SCHENLEY IMPORT CORP. NEW YORK, N.Y.

Form L 5 Treasury Department
Federal Alcohol Administration February, 1936.

Certificate of Approval of Labels of Domestically Bottled
Distilled Spirits.

Date September 1, 1937.

Pursuant to the application of Bacardi Corporation of America whose address is Bacardi Building, San Juan, Puerto Rico, the labels affixed to the reverse side hereof covering.

Bacardi Corp. of America (Carta de Plata) (Brand name) Puerto Rican Rum (Class and type of distilled spirits) are hereby approved.

Labels identical with those affixed to the reverse side hereof except in respect to size, and statement of net contents appearing thereon in conformity with Section 37 of Regulations 5, are also approved for use on bottles which conform to the requirements of Article VII of Regulations 5.

A separate label, known as the government label, prepared in conformity with circular letter FA-41, and containing the mandatory label information required by Section 32(c) Regulation 5 (may, but need not) be used on bottles bearing the labels hereby approved.

Distilled spirits in bottles bearing the labels hereby approved and the proper government label, if required, are authorized to be removed from the plant where bottled.

This certificate shall not operate to relieve any person from liability for any violation of the Federal Alcohol Administration Act, or regulations thereunder resulting from failure to any bottle bearing the labels herein approved, or the contents of such bottle, to conform to the statements and representations made on such labels.

W. B. ALEXANDER, Administrator
Federal Alcohol Administration, Washington, D. C.

EXHIBIT N-2 FOR PLAINTIFF.



Produced in Puerto Rico by Special Authority and under the supervision of
COMPANIA RON BACARDI, S.A. SANTIAGO DE CUBA

SOLE DISTRIBUTORS IN U.S.A. SCHENLEY IMPORT CORP. NEW YORK, N.Y.

Form L 5 Treasury Department
Federal Alcohol Administration February, 1936.

Certificate of Approval of Labels of Domestically Bottled
Distilled Spirits.

Date September 3, 1937.

Pursuant to the application of Bacardi Corporation of America whose address is San Juan, Puerto Rico, the labels affixed to the reverse side hereof covering Ron Superior (brand name). Puerto Rican Rum (class and type of distilled spirits) are hereby approved.

Labels identical with those affixed to the reverse side hereof except in respect to size, and statements of net contents appearing thereon in conformity with Section 37 of Regulation 5, are also approved for use on bottles which conform to the requirements of Article VII of Regulations 5.

A separate label, known as the government label, prepared in conformity with circular letter FA-41, and containing the mandatory label information required by Section 32(c) of Regulations 5, (may, but need not) be used on bottles bearing the labels hereby approved.

Distilled spirits in bottles bearing the label hereby approved and the proper government label, if acquired, are authorized to be removed from the plant where bottled.

This certificate shall not operate to relieve any person from liability for any violation of the Federal Alcohol Administration Act, or regulations thereunder resulting from the failure of any bottle bearing the labels herein approved, or the contents of such bottle, to conform to the statements and representations made on such labels.

W. B. ALEXANDER, Administrator
Federal Alcohol Administration, Washington, D. C.

EXHIBIT O FOR PLAINTIFF.

Commonwealth of Pennsylvania
Department of State

[SEAL] Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board

Harrisburg, Pennsylvania, August 5, 1937

Refer MGB

Secretary of the Commonwealth, Harrisburg, Pennsylvania

Attention: Mr. R. N. Gerner

Gentlemen: The attached is a genuine copy of a permit issued on January 1, 1936, and a certificate of cancellation of bond issued on May 27, 1936, both to the Bacardi Corporation of America, then located at 946-964 North Delaware Avenue, Philadelphia, Pennsylvania.

Signed and sealed this fifth day of August, 1937.

Very truly yours,

PENNSYLVANIA LIQUOR CONTROL BOARD

[SEAL] By: W. Worrell Wagner, Member.

Seal Permit

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board

Date Issued: January 1, 1936

Serial Number: 203

Permit No. A-52

Bacardi Corp. of America, 946-964 N Delaware Ave Philadelphia
Phila Co Pa

Now, this is to certify that the above named is hereby granted a permit to operate as a Distillery, effective on the date shown above and continuing until and including December 31, 1936, unless sooner revoked or cancelled, for the above premises.

This permit authorizes the permittee to

- (a) Produce, distill, possess, store, purchase, receive, sell, remove and deliver alcohol or alcoholic liquid;
- (b) produce, distill, possess, store, purchase for blending and rectifying only, sell and deliver to persons without the State or to State stores; rectify, blend, compound, and develop whiskey, rum, brandy, gin, cordials, and other distilled spirits.
- (c) specially or completely denature alcohol by the admixture of such denaturants according to formula approved by the Board, as shall render the alcohol or any compound in which it is authorized to be used, unfit for use as a beverage, and to sell and deliver the alcohol so denatured;

all in full accordance with the laws and regulations of the United States and the Commonwealth of Pennsylvania.

The amount which may be manufactured under this permit, excluding such alcohol as may be denatured, is less than 500,000 proof gallons.

This permit is not assignable and is valid for use only by the permittee named hereon at the location hereon designated.

Witness the hand and seal of office of the Board.

W. T. GROSSCUT

LEO A. CROSSEN

W. WORRELL WAGNER

Pennsylvania Liquor Control Board.

Countersigned:

C. E. SMITH

Director of Licensing and Enforcement.

This Permit Must be Conspicuously Displayed at the Above Location and Suitably Framed Under Glass.

Commonwealth of Pennsylvania
Liquor Control Board Harrisburg

Certificate of Cancellation of Bond

Date: May 27, 1936.

This is to certify that on March 31, 1936, bond No. dated
November 25, 1935, in the penal sum of Ten Thousand Dollars

(\$10,000.00) with Bacardi Corporation of America, Philadelphia, Pa., as principal, and Indemnity Insurance Company of North America, as surety, covering General Permit No. A-52, Serial No. 203, to operate as a Distillery for the year 1936 issued to the said principal, was cancelled as of March 31, 1936, for the following reason: Surrender of Permit.

It is further certified that there are no reported violations occurring during the time the said bond was in effect.

The surety thereon is released from all liability under the said bond for acts of the said principal occurring after the date of cancellation of the said bond.

PENNSYLVANIA LIQUOR CONTROL BOARD

By: C. E. Smith

Director of Licensing and Enforcement.

Z-398

General No. 538

Serial No. A-52

Commonwealth of Pennsylvania

[SEAL]

Pennsylvania Liquor Control Board

Permit

Harrisburg, June 13, 1934

To Bacardi Corporation of America
Philadelphia, Pennsylvania

Application and bond having been duly presented and approved, you are hereby authorized to operate a distillery located at 946-964 North Delaware Avenue, Philadelphia, Pennsylvania.

This permit authorizes the permittee to

- (a) produce, distill, possess, store, purchase, receive, sell, remove and deliver alcohol or alcoholic liquid;
- (b) produce, distill, possess, store, purchase for blending and rectifying only, sell and deliver to persons without the State or State stores; rectify, blend, compound, and develop whiskey, rum, brandy, gin, cordials, and other distilled spirits.

(c) specially or completely denature alcohol by the admixture of such denaturants according to formula approved by the Board, as shall render the alcohol or any compound in which it is authorized to be used, unfit for use as a beverage, and to sell and deliver the alcohol so denatured; all in full accordance with the laws and regulations of the United States and the Commonwealth of Pennsylvania.

The business hereby permitted shall at all times be subject to inspection by the members of the Board and the persons duly authorized and designated by the Board shall have the right, without fee or hindrance, to enter any place which is subject to inspection hereunder, or any place, where records subject to inspection under the Act of February 19, 1926, P. L. 16, as amended by Act No. 9, approved December 8, 1933, are kept for the purpose of making such inspection.

Violation of any provision of law or regulation of the United States or the Commonwealth of Pennsylvania relating to the business authorized by this permit, shall be grounds for citation for revocation hereof.

This permit is not transferable or assignable.

This permit expires December 31, 1934, unless sooner revoked or cancelled.

The amount which may be manufactured under this permit, excluding such alcohol as may be denatured, is less than 500,000 gallons.

COMMONWEALTH OF PENNSYLVANIA,

PENNSYLVANIA LIQUOR CONTROL BOARD

By: Robert S. Gawthrop, Chairman

A. Marshall Thompson, Member

Penal Provision: Sec. 20, Act of February 19th, 1926, P. L. 16, as amended by Act No. 9, approved December 8, 1933.

Section 20.—Any person or persons, who knowingly violate any of the provisions of this act, or any person who shall violate any of the conditions of any permit, or who shall falsify

any record or report required by this act to be kept or who shall violate any rule or regulation of the board, or who shall interfere with, hinder or obstruct any inspection authorized by this act, or prevent any member of the board, or any person duly authorized and designated by the board, from entering any place which such member of the board, or such person, is authorized by this act to enter for the purpose of making an inspection, or who shall violate any other provision of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00) or undergo imprisonment of not more than three (3) years, or both, at the discretion of the court.

Seal Permit

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board

Date Issued: January 1, 1935

Serial Number: 115

Permit No. A-52 1935

Bacardi Corp of America, 946-964 N Delaware Ave., Philadelphia
Phila Co Pa

Now, this is to certify that the above named is granted a distillery permit effective on the date shown above and continuing until and including December 31, 1935, unless sooner revoked or cancelled, for the premises located at 946-964 North Delaware Avenue, Philadelphia, Pennsylvania.

This permit authorizes the permittee to

- (a) to produce, distill, possess, store, purchase, receive, sell, remove and deliver alcohol or alcoholic spirits;
- (b) produce, distill, possess, store, purchase for blending and rectifying only, sell and deliver to persons without the State, or to State stores; rectify, blend, compound, and develop whiskey, rum, brandy, gin, cordials, and other distilled spirits;
- (c) specially or completely denature alcohol by the admixture

of such denaturants according to formula approved by the Board, as shall render the alcohol or any compound in which it is authorized to be used, unfit for use as a beverage, and to sell and deliver the alcohol so denatured; all in full accordance with the laws and regulations of the United States and the Commonwealth of Pennsylvania.

The amount which may be manufactured under this permit, excluding such alcohol as may be denatured, is less than 500,000 gallons.

This permit is not transferable or assignable and is valid for use only by the permittee named hereon at the location hereon designated.

Witness the hand and seal of office of the board.

ROBERT A. GAWTHROP

A. MARSHALL THOMPSON

W. WORRELL WAGNER

Pennsylvania Liquor Control Board.

Countersigned:

C. E. SMITH

Director of Licensing and Enforcement.

This Permit Must be Conspicuously Displayed at the Above Location and Suitably Framed Under Glass.

Commonwealth of Pennsylvania
Department of State
Office of the Secretary of the Commonwealth

I-A No. 657

Harrisburg August 5, 1937

Pennsylvania, ss.

I, David L. Lawrence, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, do hereby certify:

That it appears by the records of this office that W. Worrell Wagner now is a duly appointed, commissioner and qualified

member of the Pennsylvania Liquor Control Board, for a term beginning in March 7, 1936, until March 7, 1942, and until his successor shall have been appointed and qualified.

Hence, full faith and credit are due and ought to be given to his official acts accordingly.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

DAVID L. LAWRENCE

[SEAL]

Secretary of the Commonwealth

EXHIBIT P FOR PLAINTIFF.

The People of Puerto Rico
Office of the Executive Secretary

Know all men by these Presents:

That in accordance with a request of Mr. Charles R. Hartzell, of San Juan, Puerto Rico, I, C. Gallardo, Executive Secretary of Puerto Rico, do hereby certify: That the attached one printed and typewritten sheet is a true and correct copy of the Certificate of Registration issued by this office to "Bacardi Corporation of America" a corporation organized under the laws of the State of Pennsylvania, of which Certificate of Registration a true and correct copy is on file in this office.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this first day of April, A. D., nineteen hundred and thirty-six.

C. GALLARDO,
Executive Secretary.

[GREAT SEAL]

The People of Puerto Rico
Office of the Executive Secretary of Puerto Rico

Certificate of Registration

No. 497

This is to certify that: "Bacardi Corporation of America" a corporation organized under the laws of the State of Pennsyl-

vania, has filed in the office of the Executive Secretary of Puerto Rico the instruments required by Sections thirty-seven, thirty-eight and thirty-nine of an act entitled "An Act to Establish a Law of Private Corporations", approved March 9, 1911.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this thirty-first day of March, A. D., nineteen hundred and thirty-six.

C. GALLARDO

[GREAT SEAL]

Executive Secretary of Puerto Rico

EXHIBIT Q FOR PLAINTIFF.

The People of Puerto Rico
Office of the Treasurer of Puerto Rico

No. 161.

Section 63—Extract. (Paragraph 3) It shall be the duty of such corporations, companies or associations to renew their licenses annually on or before the first day of July, of each year, including the first day of July nineteen hundred and one, but no such renewal shall be issued by the Treasurer until such companies, corporations or associations shall have respectively paid the license fee hereinafter specified.

(Paragraph 4) For the issue and renewal of every license issued under the provisions of this Section, the sum of Twenty-five Dollars shall be paid into the Treasury of Puerto Rico.

This is to certify that "Bacardi Corporation of America" has paid to the Treasurer of Puerto Rico the sum of Twenty-five Dollars, as per Treasurer's Receipt Rec. Off No. 1558, dated March 31, 1936, and having complied with the requirements of Section 63 of the Act of Legislative Assembly of Puerto Rico, approved January 31st, 1901, entitled "An Act to provide Revenues for the People of Puerto Rico, and for other purposes", is hereby authorized only to transact such business or exercise such powers in Puerto Rico as a domestic corporation of like character transacts or exercises in Puerto Rico, and to such an extent as the latter may be authorized under the local laws, until June 30th, 1936.

Given at San Juan, P. R., this 6th day of April, 1936.

ANTONIO R. HERNANDEZ,

Acting Asst. Treasurer

JER RSN

EXHIBIT R FOR PLAINTIFF.

The People of Puerto Rico
Office of the Treasurer of Puerto Rico

No. 29

Section 63—Extract. (Paragraph 3) It shall be the duty of such corporations, companies or associations to renew their licenses annually on or before the first day of July, of each year, including the first day of July nineteen hundred and one, but no such renewal shall be issued by the Treasurer until such companies, corporations or associations shall have respectively paid the License fee hereinafter specified.

(Paragraph 4) For the issue and renewal of every license issued under the provisions of this section, the sum of Twenty-five Dollars shall be paid into the Treasury of Puerto Rico.

This is to certify that "Bacardi Corporation of America" has paid to the Treasurer of Puerto Rico the sum of Twenty-five Dollars, as per Treasurer's Recg. Off. Receipt No. 1655, dated July 14, 1936, and having complied with the requirements of Section 63 of the Act of Legislative Assembly of Puerto Rico, approved January 31st, 1901, entitled "An Act to provide Revenues for The People of Puerto Rico, and for other purposes", is hereby authorized only to transact such business or exercise such powers in Puerto Rico as a domestic corporation of like character transacts or exercises in Puerto Rico, and to such an extent as the latter may be authorized under the local laws, until June 30th, 1937.

Given at San Juan, P. R., this 15th day of July, 1936.

F. A. RAMIREZ VEGA,

Assistant Treasurer.

JER RSN

EXHIBIT S FOR PLAINTIFF.

The People of Puerto Rico
Office of the Treasurer of Puerto Rico

No. 56

Section 63—Extract. (Paragraph 3) It shall be the duty of such corporations, companies or association to renew their licenses annually on or before the first day of July, of each year, including the first day of July nineteen hundred and one, but no such renewal shall be issued by the Treasurer until such companies, corporations or associations shall have respectively paid the License fee hereinafter specified.

(Paragraph 4) For the issue and renewal of every license issued under the provisions of this section, the sum of Twenty-five Dollars shall be paid into the Treasury of Puerto Rico.

This is to certify that "Bacardi Corporation of America" has paid to the Treasurer of Puerto Rico the sum of Twenty-Five Dollars, as per Treasurer's Recg. Off. Receipt No. 2239, dated July 28, 1937, and having complied with the requirements of Section 63 of the Act of Legislative Assembly of Puerto Rico, approved January 31st, 1901, entitled "An Act to provide Revenues for The People of Puerto Rico, and for other purposes", is hereby authorized only to transact such business or exercise such powers in Puerto Rico as a domestic corporation of like character transacts or exercises in Puerto Rico, and to such an extent as the latter may be authorized under the local laws, until June 30th, 1938.

Given at San Juan, P. R., this 2nd day of August, 1937.

F. A. RAMIREZ VEGA,
Assistant Treasurer
RSN RS

EXHIBIT T FOR PLAINTIFF.

The People of Puerto Rico
Department of Finance
Bureau of Alcoholic Beverages and Narcotics.

Permit No. 1-R

Permit

To Engage in the Rectification of Distilled Spirits in Puerto Rico
To whom it may concern:

In view of the petition duly filed with the Bureau of Alcoholic Beverages and Narcotics of the Department of Finance, a permit is hereby issued to "Bacardi Corporation of America" of San Juan, Puerto Rico, Pershing Avenue, "La Colectiva Building", to engage in the rectification of distilled spirits in Puerto Rico, and to offer, sale and deliver for sale the alcoholic beverages so produced, at the address above mentioned.

This permit is conditioned to the compliance with the provisions of the Alcoholic Beverages Law of Puerto Rico and of all the Rules applicable in accordance with the Law now in force or which may be in force in the future, and in accordance with the Federal Laws and Regulations applicable thereto, and shall be in force from the date of its issuance and until it may be suspended, revoked, annulled, voluntarily surrendered, or that may be terminated by virtue of the provisions of the Law or Regulations.

This permit is personal and untransferable.

R. SANCHO BONET,

Treasurer of Puerto Rico

San Juan, Puerto Rico, July 20th, 1936.

EXHIBIT V FOR PLAINTIFF.

Commonwealth of Pennsylvania
County of Philadelphia, S. S.

George W. Whitney being duly sworn deposes and states that he is a resident of the City of Philadelphia, Pennsylvania, and that he is Secretary of Bacardi Corporation of America, a Pennsylvania

corporation, duly organized and existing under the laws of that state, having its principal place of business at 2004 Finance Building, Philadelphia.

He further certifies that the attached is a true and accurate copy of the original contract and license agreement dated June 8, 1934, existing between Compania Ron Bacardi, S. A., of Havana, Cuba, and the Bacardi Corporation of America as same appears in the minute book of the corporation.

He further certifies that the original of the said agreement is in his possession as of this deposition.

In witness whereof, he has hereunto attached his signature as Secretary of said corporation, together with the seal of the said corporation this ninth day of July, 1937.

[SEAL]

GEORGE WITNEY

Commonwealth of Pennsylvania,
County of Philadelphia, S. S.

On this 9th day of July, A. D. 1937, before me a Notary Public in and for the County of Philadelphia, State of Pennsylvania, personally appeared George W. Witney known to me to be the person whose name is subscribed to the above instrument and duly acknowledged that he had executed the same and requested me to certify to such fact.

Lillian M. Fornan

[NOTARIAL SEAL]

Notary Public

My commission expires April 2, 1939.

In the Courts of Common Pleas of Philadelphia County
State of Pennsylvania
County of Philadelphia, S. S.

I, John M. Scott, Prothonotary of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, acting by my Principal Deputy, Meredith Hanna, or my Second Deputy, John J. Hoerr, do certify, that Lillian N. Fornan whose name is subscribed to the

certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledge a notary public for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe the signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

The impression of the seal of the Notary Public is not required by law to be filed in this office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this tenth day of July, in the year of our Lord one thousand nine hundred thirty-seven (1937).

JOHN M. SCOTT, Prothonotary

By John J. Hoerr, Second Deputy Prothonotary.

[SEAL]

Durante Absentia, Secumdem Legem.

License and Agreement Between Compania Ron Bacardi, S. A. of Santiago de Cuba, Cuba and Bacardi Corporation of America of Philadelphia, Pennsylvania.

H. EDGAR BARNES, Attorney,

20th Floor Finance Bldg.,
No. 1428 South Penn Square
Philadelphia, Pa.

Agreement made this eighth day of June, 1934, between Compania Ron Bacardi, S. A., a Company organized and existing under the laws of the Republic of Cuba,—(hereinafter for convenience called Cuban Bacardi),—of the one part, and Bacardi Corporation of America, a Corporation organized and existing under the laws

of the State of Pennsylvania, United States of America,—(hereinafter for convenience called American Bacardi), of the other part.

Whereas, Cuban Bacardi is the owner, and has exclusive knowledge, possession and ownership of certain inventions, formulae, secrets and processes which for many years it has made use of in manufacturing, selling and distributing its products, consisting principally of brands of rum known to the trade as "Bacardi, Rum", and other products manufactured, sold, distributed and/or handled by it, hereinafter collectively called "Bacardi Products"; and

Whereas, Cuban Bacardi is the owner of trademarks, trade-names, brands, labels, and other devices used in connection with and/or upon its aforesaid Bacardi Products, which have been duly protected by registration and compliance with the requirements of the Laws of the United States of America, its possessions, and the various States thereof; and

Whereas, America Bacardi for the period of time hereinafter stipulated, is desirous of securing from Cuban Bacardi, upon the following terms and conditions, the exclusive license right and privilege to manufacture, sell, and distribute, and/or have manufactured, sold and distributed throughout the United States, as hereinafter more explicitly defined, all and singular the said Bacardi Products, and is desirous of securing the exclusive license, right and privilege to use throughout the United States, as hereinafter defined, the inventions, formulae, manufacturing secrets and processes, trademarks, tradenames, brands, labels and other devices now owned or hereafter developed by Cuban Bacardi, for the period of time hereinafter set forth; and

Whereas, Cuban Bacardi is willing to grant to American Bacardi, the desired licenses, rights, and privileges upon the terms and conditions, but subject to the limitations hereinafter set forth.

Now, therefore, in consideration of the mutual benefits and promises, and other valuable considerations, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements herein contained, the parties agree as follows:

First: This agreement shall become effective upon its due and proper execution and delivery by the parties hereto, with respect to all the rights granted to manufacture Bacardi Products, but the rights to sell and distribute Bacardi Products shall not become effective until the happening of the two following events:

(A) Until that certain Agreement between Compania Ron Bacardi, S. A. (Cuban Bacardi) and Schenley Products Company, Inc., dated November 3, 1933 shall have expired or become of no further force and effect, either by reason of the limitation of time set forth in said Agreement, or by agreement terminating same; and

(B) Until that certain Agreement between Compania Ron Bacardi, S. A. (Cuban Bacardi) and one O. J. Rohde, shall have expired or become of no further force and effect, either by reason of the limitation of time set forth in said Agreement, or by special agreement terminating the same.

Immediately upon the expiration and/or termination of either one of said Agreements, then the rights herein granted to sell and distribute Bacardi Products in that particular territory covered by the Agreement so expired or terminated shall immediately become operative and of full force and effect; and with respect to the then remaining Agreement, the right to sell and distribute in its territory shall in like manner become effective upon its expiration or termination.

However, Cuban Bacardi gives and grants to American Bacardi the right to sell and distribute said Bacardi Products to said Schenley Products Company, Inc., and/or O. J. Rohde, in their respectively granted territories, prior to the expiration or termination of the said Agreements, in the event that a mutually satisfactory arrangement for such distribution and sale be made by written agreement to which, in the one case, Cuban Bacardi, American Bacardi, and Schenley Products Company, Inc., shall be parties, and by like agreement to which, in the other case, O. J. Rohde, Cuban Bacardi and American Bacardi shall be parties.

In the absence of such an agreement, however, the limitation

upon the right to sell and distribute on the part of American Bacardi shall continue in full force and effect as in this paragraph provided.

Second: The territory hereby exclusively granted by Cuban Bacardi to American Bacardi (subject to the provisions as set forth in Paragraph First) shall be and is hereby defined as follows:

All of continental United States of America, including Alaska, and the Territories and Possessions of the United States of America, (excepting the Philippine Islands, Porto Rico, and the Canal Zone) which territory is hereinafter for convenience called "the granted territory".

Third: The term of this Agreement and License shall be and the same is hereby made for the period commencing June 1, 1934, and expiring December 31, 1944,—conditioned upon American Bacardi actually paying to Cuban Bacardi the stipulated royalty to the amount, in the manner, and at the times as mentioned in Paragraph Sixth hereof, upon said products, as follows:

From June 1, 1934, to December 31, 1934, no royalty shall be paid.

From January 1, 1935, to December 31, 1936, upon 250,000 gallons.

From January 1, 1937 to December 31, 1938, upon 300,000 gallons.

From January 1, 1939, to December 31, 1940, upon 450,000 gallons.

From January 1, 1941 to December 31, 1942, upon 550,000 gallons.

From January 1, 1943, to December 31, 1944, upon 650,000 gallons.

After December 31, 1944, this License Agreement and all provisions thereof in force on December 31, 1944, shall automatically continue from year to year, and shall not terminate so long as American Bacardi shall pay to Cuban Bacardi the stipulated royalty mentioned in Paragraph Sixth, upon a minimum of one million (1,000,000) gallons of said Bacardi Products per year.

The expression—"a year", as herein used shall be deemed to be a calendar year, to wit, from January 1st to the next succeeding December 31st in each year of said term and/or terms.

Fourth: Cuban Bacardi, subject to the conditions in this Agreement made, hereby gives and grants the following exclusive licenses, rights, privileges and franchises to American Bacardi for the following uses, purposes and objects, namely:

- (a) To manufacture, sell and distribute and/or have manufactured, sold and distributed in the granted territory, all and singular the products of Cuban Bacardi which it now makes, owns, possesses and controls, or which it may hereafter invent, discover, develop, acquire, own or control.
- (b) To use the inventions, formulae, manufacturing secrets and processes now owned or hereafter discovered, developed, and/or acquired by Cuban Bacardi.
- (c) To use the name Bacardi and/or Bacardi Rum, and all and singular the trademarks, trade-names, brands, labels, caps, bottles, packages, devices, designs, and other distinctive appurtenances, accessories or adjuncts to the subjects in this paragraph mentioned, now owned or hereafter discovered, developed and/or acquired by Cuban Bacardi.
- (d) To sell in the granted territory all brands of rum manufactured and/or handled by Cuban Bacardi and/or other products manufactured outside of the granted territory and imported into the granted territory, at such price or prices and upon such terms or shipment and payment as the parties may mutually determine from time to time during the continuance of this agreement.
- (e) To use the name Bacardi not only in the corporate title of American Bacardi, but as well as in the name of any affiliated or subsidiary Company hereafter organized and incorporated by American Bacardi for the purpose of carrying into effect the provisions of this Agreement in the granted territory.

Fifth: Nothing herein contained shall give to American Bacardi any right, title or interest in the name Bacardi, Bacardi Rum,

or in its inventions, formulae, manufacturing secrets and processes, trade-marks, trade-names, brands, labels, caps, bottles, packages, designs or other devices, except the rights, privileges and licenses herein granted to use said names, rights, and privileges as enumerated upon the products manufactured and/or sold and distributed by it in the granted territory.

It is expressly agreed that all such secret processes, secret formulae and franchises, as above mentioned, shall be and remain the sole and exclusive property of Cuban Bacardi, and shall not be divulged by American Bacardi except upon the consent of Cuban Bacardi, and the right of American Bacardi to use such secret processes, secret formulae and franchises, as above, shall wholly cease upon the termination of this Agreement.

It is expressly agreed that the labels used by American Bacardi shall in every instance bear a trademark designation now owned or hereafter owned by Cuban Bacardi; that each of said labels shall bear a clear indication of the name and title of Cuban Bacardi, together with the words "Santiago de Cuba", and that each of said labels shall further bear a clear designation that the goods distributed under the labels and each of them, are manufactured, sold and distributed by American Bacardi as the exclusive licenses in the United States of America of the Cuban Bacardi, provided, however, that nothing herein shall be construed as preventing Cuban Bacardi from granting to American Bacardi through an appropriately written privilege the right to use any particular label or labels, to be specifically identified in such written privilege, as may be deemed warranted and necessary by the parties hereto for business reasons or conditions.

It is expressly understood and agreed that no right is granted to license, sub-license or sell, transfer or assign the rights, privileges and franchises so granted and licenses to American Bacardi. In the event that American Bacardi shall organize and incorporate subsidiary or affiliated Companies in order to carry out the purposes of this Agreement, the use of the same names, licenses, rights and privileges by such subsidiaries and affiliated companies shall not be deemed or construed to be a sale or assignment or vio-

lation of the terms hereof during the continuance of this Agreement.

Sixth: American Bacardi agrees to pay to Cuban Bacardi for the rights, privileges and franchises and all other benefits conferred upon it under the terms of this Agreement, a stipulated royalty or license fee upon a gallonage basis of Bacardi products manufactured and sold by it. Such royalty or license fee is hereby stipulated to be the sum of One Dollar and Forty Cents (\$1.40) per gallon. One-half of the amount of such royalty or license fee shall be payable quarterly in United States legal tender at the designated depository of Cuban Bacardi, in Cuba, or in the United States, as Cuban Bacardi shall require, during the months of March, June, September and December of each and every year during the continuance of this contract; the remaining one-half of said royalty or license fee shall be paid to Cuban Bacardi in like money at its designated depository within ninety (90) days after December 31st of each year, as a settlement in full for all amounts due and owing for such year preceding upon royalty and license account. As hereinabove stated, the royalty or license fee is to be paid for each gallon of Bacardi Products manufactured and sold by American Bacardi, but no royalty or license fee shall be paid to Cuban Bacardi for sales made during the period extending from June 1st, 1934, to December 31st, 1934, nor upon sales made at any time for which American Bacardi has been unable to make collection and obtain payment after due and diligent effort on its part.

Seventh: Simultaneously with the payment of said quarterly royalty and license fee, American Bacardi shall render, deliver and/or transmit to Cuban Bacardi, addressed to its principal office in Santiago de Cuba, a full and accurate statement in writing, prepared in accordance with good accounting practice, of all Bacardi Products manufactured and sold by it during the preceding quarterly period. Such statement shall, at the request or option of Cuban Bacardi, be prepared and verified by a disinterested Certified Public Accountant appointed by Cuban Bacardi.

Eighth: American Bacardi shall keep true and correct records and books of account showing all goods manufactured and sold by it in accordance with the principles of good accounting practice, and Cuban Bacardi or its agents shall have the right to examine and inspect by itself or its duly authorized attorney or accountant, all the books, records and accounts of American Bacardi at all reasonable times, and to make copies as it may desire, of such records, books and accounts.

Ninth: For and in consideration that Cuban Bacardi has expended large sums of money in developing a high quality for its products recognized throughout the world, over a long period of years, it is understood and agreed between the parties that Cuban Bacardi shall designate and appoint a person experienced in the installation of the machinery and equipment, as well as in the manufacturing of Bacardi Products, who shall at all times during the continuance of this Agreement be employed by American Bacardi, and stationed at its plant, to direct and superintend the manufacture of said Bacardi Products to the end and purpose that the products manufactured by American Bacardi shall conform to the aforesaid standard of excellence and quality of the products of Cuban Bacardi. The services of such person shall be paid by American Bacardi, but such person shall be answerable to Cuban Bacardi, for the quality and excellence of the products manufactured. In the event of the resignation, death or removal of such person appointed for the purpose herein stated, Cuban Bacardi shall have the right to designate a successor to such person.

It is the spirit and intention of this Agreement that at all times during the term hereof, or any renewal or extension hereof, such direction and supervision of products manufactured shall be vested in Cuban Bacardi. This provision shall relate only to the products manufactured in the United States, and not to those imported herein.

Tenth: American Bacardi covenants and agrees that during the term of this contract it will diligently and vigorously do its utmost to develop the distribution and sale of Bacardi Products in

the granted territory, so that the royalties payable hereunder may be commensurate with and compensatory to Cuban Bacardi for the valuable rights, privileges and franchises hereby granted. American Bacardi agrees that it will not manufacture, sell, or offer for sale any products which are substitutes or imitations of, or used competitively or unfairly with Bacardi Products.

Eleventh: American Bacardi shall have the right to institute or bring any suit or suits, or other proceedings at law or in equity that it may be advised to institute for or by reason of the infringement, unauthorized use, piracy or other unfair trade competition on the part of any person, firm or corporation with respect to or in any wise affecting the inventions, formulae, manufacturing secrets and processes, trademarks, trade-names, brands, labels, caps, bottles, packages, designs, and other devices, as well as any improvements thereon or changes made therein, the use of which has been hereinabove granted and licensed to American Bacardi, and for that purpose and all purposes American Bacardi shall have the right to use the name of Cuban Bacardi as a party complainant, either solely or jointly with American Bacardi's own name, provided, however, that such suit or suits, shall be instituted, maintained and prosecuted solely at the cost and expense of American Bacardi, and that any and all sums that may be received, obtained, collected, or recovered, in any such suit or suits, whether by decree, judgment, settlement, or otherwise, shall be the sole and exclusive property of American Bacardi.

Twelfth: Cuban Bacardi warrants that it has the ownership of and the power to grant to American Bacardi the rights, privileges and franchises hereinabove mentioned, and to authorize and empower the license hereinabove given. It hereby agrees to protect and indemnify American Bacardi against any and all actions, suits, claims demands or prosecutions that may be brought or instituted against American Bacardi, and against all damages, costs, and expenses that may be recovered against or paid by it growing out of the use by American Bacardi of its inventions, formulae, manufacturing secrets and processes, trade-marks, trade-names,

brands, labels, caps, bottles, packages, designs, and other devices granted and licensed to it by Cuban Bacardi as herein contained.

Thirteenth: Cuban Bacardi covenants and agrees that it will promptly during the continuance of this Agreement, upon the request of American Bacardi, execute, acknowledge and deliver or otherwise properly authenticate, as may be required by law, all and singular such document or documents, instrument or instruments, in writing, applications, licenses, registrations, or other legal papers which may be proper, appropriate or necessary to carry into effect the provisions of this agreement.

Fourteenth: American Bacardi agrees that with respect to the products manufactured and sold by it, it will comply with all the laws, requirements, rules, regulations and standards prescribed by the Federal, State and other public authorities, so that it shall not be subject to any fines or penalties, or violate any laws and regulations affecting the sale of the said products to the public.

Fifteenth: (A) If American Bacardi shall wilfully or negligently fail to perform its obligations under this agreement and license, or shall violate any provisions hereof, then Cuban Bacardi shall give written notice of such failure or violation, specifically setting forth the particular default or violations alleged, which notice shall be sent by registered mail to American Bacardi at its principal office or place of business in the City of Philadelphia, Pennsylvania. If American Bacardi shall continue in such default or violation for a period of sixty (60) days after said notice shall have been received by American Bacardi then Cuban Bacardi shall have the right, at its option, to terminate this entire Agreement. In such event, all the rights, privileges and franchises herein given, and the license herein granted, shall cease and absolutely terminate.

(B) In the event that American Bacardi shall fail for any particular year during the continuance of this Agreement, or any extension or renewal thereof, to pay to Cuban Bacardi the stipulated royalty based upon the minimum gallonage, as specified in Paragraph Third hereof, then Cuban Bacardi shall within thirty (30) days after the date in that particular year when default occurred make demand for the minimum royalty due by written notice

to American Bacardi sent by registered mail, addressed to its principal office in the City of Philadelphia, State of Pennsylvania. If within sixty (60) days after the receipt of such notice American Bacardi shall fail to pay the minimum royalty in full, as specified for that particular year, then Cuban Bacardi, at its option, shall have the right to terminate this entire Agreement, and shall give in like manner written notice to American Bacardi to such effect. It is agreed, however, that after the expiration of the last mentioned period of sixty (60) days without such notice being given by Cuban Bacardi, then any default for such particular year shall not be carried over to any succeeding year of this Agreement, but shall be deemed to be absolutely waived and lost.

(C) In the event that American Bacardi shall fail to make the payments of the stipulated royalty or license fee for each gallon of Bacardi Products manufactured and sold by it, in the manner as provided in Paragraph Sixth hereof, and such default shall continue for a period of sixty (60) days after written notice and demand from Cuban Bacardi sent by registered mail, addressed to American Bacardi at its principal place of business in the City of Philadelphia, State of Pennsylvania, then Cuban Bacardi shall, at its option, have the right to terminate this entire Agreement by appropriate written notice sent in like manner to American Bacardi.

Sixteenth: So long as American Bacardi shall faithfully comply with the terms and conditions of this Agreement and License Cuban Bacardi warrants and agrees that it shall have and enjoy without interference or hindrance the rights privileges, and benefits hereby granted to it.

Seventeenth: Should American Bacardi, or the business operated by it fail, become bankrupt, or be placed in the hands of a Receiver, then this Agreement and License shall automatically terminate and be of no further force and effect whatsoever.

Eighteenth: This Agreement shall become binding upon the parties hereto only upon the ratification of its execution and delivery by the respective Boards of Directors of Cuban Bacardi and

American Bacardi. Each party hereto shall send to the other written notice immediately upon such ratification.

This Agreement shall be construed in accordance with the Laws of the States of Pennsylvania.

Wherever in this Agreement the name "Compania Ron Bacardi, S. A." appears, it shall be read and known to be "Compania Ron Bacardi, S. A."

In witness whereof, the parties hereto have respectively caused their names to be written and their corporate seals to be hereunto affixed, duly attested by their proper Officers, the day and year first above written.

COMPANIA RON BACARDI, S. A.,

By: Henri Schueg, President

Attest: Secretary.

BACARDI CORPORATION OF AMERICA,

By: Luis J. Bacardi, President.

Attest: Nemesio Alvare

Secretary.

[SEAL]

State of Pennsylvania

County of Philadelphia ss.

I, Nemesio Alvare, Secretary of the Bacardi Corporation of America, a Corporation of the State of Pennsylvania, do hereby certify that the following is a true and correct copy of the Preambles and Resolutions passed at a duly convened meeting of the Board of Directors of the Bacardi Corporation of America, held on the Eighth day of June, 1934, at No. 2004 Finance Building, 1428 South Penn Square, in the City of Philadelphia, Pennsylvania, and that said Preambles and Resolutions have not been amended, rescinded or revoked in any way whatsoever:

Whereas the Officers of this company were authorized by the Board of Directors at the meeting held on the 25th day of April, 1934, to negotiate with the Compania Ron Bacardi, S. A., Santiago de Cuba, Cuba, a contract and license agreement whereby this Company shall acquire the right to use

the name Bacardi and all and singular the trademark, trade-names, formulae, labels, brands, and packages of said Company; and

Whereas pursuant to the authority granted at said meeting, the officers of this company have negotiated such a contract whereby this company, upon the terms and conditions and subject to the limitations as set forth in detail in the proposed written agreement between said Compania Ron Bacardi, S. A., of Santiago de Cuba,—Cuba, and this Company, (as submitted to this meeting and read paragraph by paragraph), acquires such rights, licenses and privileges.

Now, therefore, be it resolved that the Officers of this Company be and they are hereby authorized, instructed and directed to execute and deliver for, on behalf of, and in the name of this corporation, that certain license agreement and contract between Compania Ron Bacardi, S. A., of Santiago de Cuba, Cuba, and this Company, dated June 8, 1934, whereby this Company acquires the exclusive license, right and privilege to manufacture, sell and distribute throughout the United States, as in said Agreement defined, all and singular the Bacardi Products, together with the exclusive license, right and privilege to use the inventions, formulae, manufacturing secrets and processes, trade marks, trade-names, brands, labels, and other devices upon the terms and subject to the limitations and conditions as in said contract expressly provided, and for and in consideration of the license and royalty payments as therein particularly specified and at large set forth.

Be it further resolved that the Officers of this Company be and they are hereby authorized and empowered to carry out and perform the said Resolutions and do all things necessary and proper on the part of this company to be done and performed in order to execute and make delivery of the said Agreement, and to carry out the intendment of these Resolutions.

I do further certify that the foregoing contract, to which this certification is attached, has been carefully examined by me, and it is in all respects the true and genuine contract which was submitted to, read, approved and authorized to be executed and delivered by the Directors of said Bacardi Corporation of America.

In witness whereof I have hereunto set my hand and the seal of said Corporation. Dated at Philadelphia, this eighth day of June, A. D., 1934.

NEMESIO ALVARE

Secretary

[SEAL]

EXHIBIT W FOR PLAINTIFF.

Amendment to Agreement of June 8, 1934.

Compania Ron Bacardi and Bacardi Corporation of America

AGREEMENT

made this 19th day of December, 1935, between Compania Ron Bacardi, S. A., a Company organized and existing under the laws of the Republic of Cuba, (hereinafter called Cuban Bacardi), and Bacardi Corporation of America, a Corporation organized and existing under the Laws of the State of Pennsylvania, United States of America (hereinafter called American Bacardi):

Witnesseth:

Whereas, the parties hereto entered into an Agreement dated June 8, 1934, whereby Cuban Bacardi granted unto American Bacardi under certain terms and conditions, for certain territories therein described, certain licenses, franchises, rights and privileges connected with the use of the inventions, formulae, manufacturing secrets and processes, trade-marks, trade-names, brands, labels and other devices then owned or thereafter to be developed by Cuban Bacardi, and

Whereas, it now seems advisable and highly beneficial to both parties that the territory described in said agreement on June 8, 1934, be increased and extended and that certain provisions of

said agreement relating to the payment of royalties be amended and modified.

Now therefore, in consideration of the mutual benefits and promises, and other valuable considerations, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements herein contained, the parties agree that the said agreement of June 8, 1934, shall be and hereby is duly amended, changed and supplemented as follows:—

(1) The second paragraph of Section Second of the said agreement, which described and outlines in detail all of the so-called "granted Territory" wherein the exclusive licenses, franchises, privileges and rights granted to American Bacardi are to apply, shall be amended, changed and supplemented to read:

"All of continental United States of America, including Alaska, and the Territories and Possessions of the United States of America, (excepting the Phillippine Island, and the Canal Zone)! which territory is hereinafter for convenience called "the granted territory".

(2) The schedule of dates and number of gallons recited in the first paragraph of Section Third of the said agreement, which govern the amount of royalties that are to be paid as provided in Section Sixth of the said agreement, shall be amended, changed and supplemented to read:

"From June 1, 1934, to December 31, 1938, no royalty shall be paid.

"From January 1, 1939, to December 31, 1939, upon 250,000 gallons.

"From January 1, 1940, to December 31, 1940, upon 300,000 gallons.

"From January 1, 1941, to December 31, 1941, upon 450,000 gallons.

"From January 1, 1942, to December 31, 1942, upon 550,000 gallons.

"From January 1, 1943, to December 31, 1944, upon 650,000 gallons."

(3) The last sentence of Section Sixth of the said Agreement, referring to the dates when the royalty or license fee is to be paid, shall be amended, changed and supplemented to read:

"As hereinabove stated, the royalty or license fee is to be paid for each gallon of Bacardi Products manufactured and sold by American Bacardi, but no royalty or license fee shall be paid to Cuban Bacardi for sales made during the period extending from June 1st, 1934, to December 1st, 1938, nor upon sales made at any time for which American Bacardi has been unable to make collection and obtain payment after due and diligent effort on its part."

In all other respects and particulars the said Agreement of June 8, 1934, is hereby ratified, confirmed and approved in its entirety.

It is specifically agreed that the approval and consent by either party to the amendments, changes and supplements herein contained shall not be construed by the other as such an act as will constitute a violation, 'reach, rescission and/or cancellation of said Agreement of June 8, 1934, or as such an act as will require or obligate either party to make other and additional amendments, changes and supplements to the said agreement, or as a waiver of any of their respective rights thereunder,

In witness whereof, the parties hereto have respectively caused their names to be written and their corporate seals to be hereunto affixed, duly attested by a proper officer, the day and year first above written.

[SEAL]

COMPANIA RON BACARDI, S. A.

By Henri Schueg, President.

BACARDI CORPORATION OF AMERICA,

By: Jose M. Bosch,

Vice-President & Treasurer

[SEAL]

EXHIBIT X FOR PLAINTIFF.

March 6, 1936.

Porto Rican American Tobacco Co., San Juan, Puerto Rico.

Gentlemen: — Confirming conversations between the undersigned, J. M. Bosch, Treasurer of Bacardi Corporation of America,

hereinafter referred to as the "corporation", and your Messrs. Charls and Pasarell, I beg to submit herewith for your confirmation and acceptance, the following proposals:

That the corporation will arrange with the Federal Emergency Relief Administration, hereinafter referred to as the "FERA", the present lessee of the building owned by you and known as the "Marina property of The Porto Rican American Tobacco Co.", a five-story building situated on the marginal street and across from the American Railroad Station, San Juan, P. R., to occupy, with the consent of the FERA, such portion or portions of the said building as may become available for the use of the corporation during the period of the present lease occupancy of the building by the FERA; arranging with the FERA for the payment to it of such amounts for the use of such released portions of the said building as may be mutually agreed upon between the corporation and the FERA; it being understood that the corporation will obtain the acquiescence by the FERA that this arrangement will not affect in any manner the direct relationship of landlord and tenant between the FERA and yourselves under the existing lease; this partial occupancy by the corporation for the purposes of its operations of manufacturing and storage of its products, under the foregoing conditions, being fully agreed to by you.

That immediately upon termination of the lease and/or occupancy of the said building and premises by the present lessee thereof, the said FERA, you will formally execute a legal document or documents of lease and option to purchase, in favor of and acceptable to the said corporations, its successors or assigns, upon the following terms:

The rental of the said building to be at the rate of \$800.00 per month payable at the end of each month.

The term of the said lease to be for three years from the date of the formal execution and ratification of the same.

The inclusion in the said lease document or documents of a firm option by you to the corporation, its successors or assigns, to purchase the said building and land now pertaining thereto for the

total sum of \$95,000.00, at any time during the term of the said lease in which the said Corporation, its successors or assigns may elect to purchase the said property at the said purchase price, undertaking to convey recordable title by proper documents, free of all liens or encumbrances whatsoever.

That the lessee shall pay said rental promptly, as provided in the said document of lease.

That the lessor shall keep the roof and exterior of the building in good condition and repair; all interior alterations and repairs made by the lessee to be for its account. The lessee to undertake to return the property to the owners at termination of lease in condition equivalent to its present condition.

That if the lessee in any way increases the insurance hazard of the said building, the lessee shall pay the additional cost of such insurance, and will also reimburse the lessor for any increase in property taxes on the specific property as a result of direct improvements by the lessee, but not as a result of a general property tax increase in the city of San Juan.

It is mutually agreed and understood by you and the undersigned that in consideration of the said lease and upon your acceptance and ratification of this communication the same shall constitute a formal undertaking of lease and option to purchase under the conditions hereinabove set forth.

BACARDI CORP. OF AMERICA,

J. M. Bosch, Treasurer

The foregoing is fully accepted and confirmed.

PORTO RICAN-AMERICAN TOBACCO COMPANY

By: Charles J. Charles.

EXHIBIT Y FOR PLAINTIFF.

P. Juvenal Rosa
Abogad-Notario

Numero Eight.

Escritura de Lease and Option of Purchase Otorgada por
The Porto Rican American Tobacco Co.
and

The Bacardi Corporation of America
on July 22, 1936
At San Juan, Puerto Rico

Deed Number Eight
Lease and Option of Purchase.

In the City of San Juan, Island of Puerto Rico, on the twenty-second day of the month of July nineteen hundred and thirty-six. Before me P. Juvenal Rosa, a Notary Public in and for the Island of Puerto Rico with office situated on the fifth floor of Ochoa Building, San Juan, Puerto Rico, there appear:

On the one part.—Mr. Charles J. Charles, of legal age, married and resident of San Juan, Puerto Rico. Mr. Charles J. Charles appears as attorney-in-fact of the Porto Rican American Tobacco Company, a corporation organized and existing under the laws of the State of New Jersey with principal office in the City of Newark, New Jersey, hereinafter called "the lessor".

And on the other part.—Mr. Jose M. Bosch, of legal age, married, and resident of New York, N. Y., Mr. Bosch appears as Vice-President of the Bacardi Corporation of America, a corporation organized and existing under the laws of the State of Pennsylvania, United States of America, duly authorized to do business in Puerto Rico, hereinafter called "the lessee".

The appearing parties state that they are authorized by their principals to enter into this contract and hereby undertake to deliver to each other the proper and necessary documentary evidence of their authority to be presented when and as it should be necessary.

The appearing parties assert that they are in the full enjoyment and exercise of their civil rights, nothing being known to me, the Notary, to the contrary, and I being of the opinion that they have sufficient legal capacity for the execution of this instrument, they freely and voluntarily state

First.—That the Lessor owns in fee the following property:

"Urban.—Lot marked with letter 'A', in the place known as 'Terraplen', on the east side of the 'Muelle de Travesia', Marina ward of this city, composed of one thousand seven hundred forty-nine square meters four hundred seven millimeters. Bounded on the north by the old Hornos Militares, today, Building of The People of Puerto Rico; on the south, by the side-walk of the pier, today, Malecon Street; on the east, by a street without name, to-day, General Haig Street, and on the west by a street without name, to-day, Street "C". On this lot there has been built a four story and attic concrete building, one hundred (100) feet wide by one hundred and seventy-two (172) feet long, with its plumbing installation and all fittings installed and used in connection therewith, and a garage. Recorded at page one hundred thirty-three (133) of volume forty-one (41) of the Capital, property one thousand six hundred ninety-six (1696), inscription third.

Second.—That the above described lot was acquired by the lessor by purchase made from the partnership Rucabado & Portela, as per deed Number Fifty, executed in San Juan, Puerto Rico, on February two, nineteen hundred, before Notary Public Santiago B. Palmer.

Third.—That the Lessor has agreed to let and hereby does let and demise unto the Lessee the above described building and lot, with all its appurtenances, furniture and fixtures, to be used by the Lessee for the purposes of its operations of manufacturing and storage of rum and any other legitimate business, under the following stipulations and conditions:

(a) The term of this lease shall be for three years, beginning on July first, nineteen hundred and thirty-six, and ending on July first nineteen hundred thirty-nine, to which date it is made retro-active.

(b) The rental of this lease shall be Eight Hundred Dollars (\$800.00) per month payable at the end of each month, at the office of the Lessor in San Juan, Puerto Rico.

(c) All taxes and excises on the premises herein leased shall be paid by the Lessor, and the water and electricity used in the premises shall be paid by the Lessee.

(d) The Lessee shall pay the rental promptly and the Lessor shall keep the roof and exterior of the building in good condition and repair, but all the interior alterations and repairs made by the Lessee, and the repair of the alterations shall be for its own account.

(e) The Lessee hereby agrees and undertakes to return the property to the Lessor at the termination of the lease in a condition substantially the same as its present condition, subject to necessary wear and tear.

(f) If the Lessee in any way increases the insurance hazard of the leased building, the Lessee shall pay the additional cost of such insurance and will also reimburse the Lessor for any increase in property taxes on the specific property as a result of direct improvements by the Lessee, but not as a result of a general property tax increase in the city of San Juan!

Fourth.—In consideration of the premises it is mutually agreed and understood by the Lessor and Lessee that the Lessee, its successors or assigns, shall have and is hereby granted an option to purchase the said building and land now pertaining thereto for the total sum of Ninety Five Thousand Dollars (\$95,000.00) at any time during the term of this lease, at which time the Lessee, its successors or assigns, may elect to purchase the said property at the said purchase price, the Lessor hereby undertaking and agreeing to convey recordable title by proper documents, free from all liens or encumbrances whatsoever.

Fifth.—Except in the case of legal action for non-payment of the rentals, the parties hereby agree to submit to arbitration any doubt or misunderstanding which may arise in the interpretation of this contract. The arbitrators shall be appointed, one by each

party and a third one by these two, the parties hereby agreeing and undertaking to abide by their decision, or by the decision of a majority thereof. In case the two arbitrators appointed by the parties do not agree as to the appointment of the third arbitrator within fifteen days, the parties shall be at liberty to enforce their rights in the courts, provided that the two arbitrators have not prior to the expiration of the fifteen days, agreed to extend this limit.

Sixth.—This contract may be recorded in the Registry of the Property, and the Registrar's fee for recording as well as those for its cancellation at its termination, shall be paid by the Lessee.

The appearing parties accept this deed in the form it reads and it is executed before me, the Notary, in the presence of the two witnesses, of legal age and residents of San Juan, Puerto Rico, Mr. Luis E. Diaz and Mr. Charles R. Hartzell.

The pertinent legal warnings having been made by me the Notary, and this deed having been read by the appearing parties and witnesses, to which I certify, the said parties approved and ratify its contents and sign it together with the witnesses, before me, the Notary.

The appearing parties have placed their initials on all other sheets in accordance with the Notarial Law now in force.

To all the foregoing, and to my personal knowledge of the appearing parties and witnesses, and of their respective ages, civil status and residence, by their statements, and to everything else contained and by me averred in this instrument, I, the Notary certify, upon my notarial faith, and under my mark, signature and seal.

(Signed) CHARLES J. CHARLES.

JOSE M. BOSCH.

LUIS E. DIAZ.

CHARLES R. HARTZELL.

Signed, (marked, rubricated and sealed) P. JUVENAL ROSA.—
Notary Public.

[Cancelled on the original the necessary Internal Revenue
Stamps]

It is in accordance with the original which under number Eight appears in the general current notarial protocol in my charge, to which I refer. And at the request of Mr. Jose M. Bosch, I hereby issue this first certified copy of seven pages, with the notation thereof on the original.—San Juan, Puerto Rico, on the twenty-second day of July, nineteen hundred and thirty-six.

P. Juvenal Rosa,

Notary Public

Cancelled Internal Revenue Stamps \$3.30.

Inscrito a folio 122, tomo 43, de esta ciudad finca 1696, inscripcion 6a., practicada con vista de otros documentos, sin mas gravamen que el arrendamiento.

San Juan, P. R., 15 Octubre, 1936.

A. Malaret, Registrar.

Cancelled \$23.00 in stamps, num's 175 Arl y C. P.

EXHIBIT Z FOR PLAINTIFF.

San Juan, Puerto Rico,

March 31st, 1936.

The Honorable, The Treasurer of Puerto Rico, San Juan, P. R.

Attention: Bureau of Excise Taxes.

Sir: The Bacardi Corporation of America, a Pennsylvania corporation, having received Certificate of Registration No. 497 from the Executive Secretary of Puerto Rico, pursuant to the Private Corporations Act of 1911 as amended, and having paid the annual license fee to the Treasury Department as required, respectfully informs you that it is its purpose, subject to its compliance with the provisions of Act No. 38 of 1935 and Treasury Department regulations, to engage in the business of rectifying of distilled spirits dealing as a wholesaler therein, and maintaining such bonded warehouses as may be necessary for the purpose.

Therefore, in accordance with the said Act and the regulations therein provided, the corporation has the honor to request:

1.—Inspection by the Bureau of Excise Tax of the premises

which the company proposes to use for rectifying purposes, etc., situated in the building known as "La Colectiva", at calle Marina corner of Calle General Haig, heretofore occupied in part by the Federal Emergency Relief Administration.

2.—Issuance of form of certificate required by Section 12 of the said Act, No. 38 in order that the company may execute and file the same in your office for approval.

3.—Specification of the amount of bond required under section 30 of the said Act.

4.—Issuance, upon approval of the foregoing and the payment of the necessary fees, of the following licenses:

(a) Rectifier (25.00)

(b) Wholesale dealer in alcohol, distilled or rectified alcohol spirits, etc. (class to be assigned)

(c) The establishment of such warehouse or warehouses as may be necessary in connection with the foregoing operations under such bond as may be prescribed by the Treasurer of Puerto Rico, etc.

5.—Any such other requisite action by your Bureau as may be provided for by the said Act and regulations.

Respectfully,

BACARDI CORPORATION OF AMERICA

By: Vice-President

EXHIBIT AA FOR PLAINTIFF.

The People of Puerto Rico
Depart of Finance Office of the Treasurer

San Juan, Puerto Rico,

April 6th, 1936.

Bacardi Corporation of America c/o Hartzell, Kelley & Hartzell,
Ochoa Building, San Juan, Puerto Rico.

Attention Mr. Bosch, Vice-President,

Sirs: Receipt is acknowledge of your letter of March 31, 1936, relative to the requirements of laws and regulations for the estab-

lishing and operating of a rectifying plant for the rectification of distilled spirits to be located at the corner of Marina and General Haig Streets, in the building known as "La Colectiva".

According to the Beverage Law in force and the rules and regulations of the Department, the following must be submitted to this office for approval before the corresponding license may be authorized:

Certified copy of the Basic Permit issued by the Federal Alcohol Administration to Bacardi Corporation of America, as rectifier in Puerto Rico.

Certified copy of Certificate of Registration of the Executive Secretary of Puerto Rico.

Sworn statement of an official of the Corporation setting forth the names of the persons duly authorized to sign official documents in connection with the operation of the rectifying plant and their official positions.

Rectifier's Bond in the amount of \$10,000 (Department Form No. 210).

According to an inspection made personally by Mr. Bell of the Beverage Division, with Mr. Bosch, of the building in which the rectifying plant is to be established, there are a number of exposed pipes constituting a water sprinkling system throughout the building; the disposition of which will be left pending until final installation of the rum pipes leading to and from the bottling and processing room. Otherwise the building and its location has the approval of the Department as a rectifying plant.

Approval of the Bonded Warehouse is also left pending the necessary changes in conformity with the rules and regulations of the Department as indicated by Mr. Bell to Mr. Bosch on the inspection trip.

Upon presentation of the above mentioned forms and certified copies, due consideration will be given to the issuance of the corresponding rectifier's license.

If possible, a set of preliminary plans showing details of proposed installations should be submitted to the Department. These

plans, will, of course, be subject to change in accordance with the final installations.

Respectfully,

R. SANCHO BONET,

Treasurer of Puerto Rico.

EXHIBIT AB FOR PLAINTIFF.

September 25th, 1936.

Hon. Treasurer of Puerto Rico, San Juan, Puerto Rico.

Sir: As you know, we are the holders of the following permits:

Permit to Rectify No. 1-R, dated July 20, 1936.

Permit to Distill No. 11-D, dated July 20, 1936.

Permit to import alcoholic beverages No. 55, dated August 11, 1936.

Permit for a warehouse No. 16-A, dated September 19, 1936.

Permit for a warehouse in our distillery No. 13, dated August 18, 1936.

We beg of you to have the kindness to order and send us the renovation of the said permits to continue our industry in accordance with the new Beverage Law.

Awaiting the favor of a prompt answer, we thank you and remain,

Respectfully,

Vice-President.

EXHIBIT AC FOR PLAINTIFF.

The People of Puerto Rico

Department of Finance

Bureau of Alcoholic Beverages and Narcotics.

San Juan, Puerto Rico

September 29th, 1936

Bacardi Corporation of America, San Juan, Puerto Rico

Sirs:—I acknowledge receipt of your letter of the 25th instant, in which you request a renewal of the licenses granted you by

this Department for the business of distilling, rectifying, importing and warehousing of distilled spirits.

In answer I here transcribe the Art. 45 of the law re alcoholic beverages approved June 30th, 1936 which reads as follows:—

"Section 45.—No person may engage in Puerto Rico in the business of distilling, rectifying, manufacturing, bottling or canning, or storing distilled spirits, rectified spirits, or alcoholic beverages, unless such person has received a permit from the Treasurer for engaging in said activities. For each kind of these activities a separate permit issued by the Treasurer shall be required. The form, scope, and conditions of said permits shall be prescribed by the Treasurer, by regulation. The permits to which this section refers shall not be confounded with the licenses required under other provisions of this Act, and shall be granted only on such conditions as the Treasurer may by regulation prescribe."

In accordance with that prescribed by the said article, you do not require a renewal of the licenses granted you in order to continue the activities referred to.

Yours very truly,

(illegible) Looks like

F. A. Ramirez Vega

Assistant Treasurer.

EXHIBIT AE FOR PLAINTIFF.

Hon. Treasurer of P. R., San Juan, P. R.

Sir: We acknowledge receipt of your letter of the 10th inst. and enclose herewith two applications; one requesting a permit for distilling and the other for rectifying alcoholic beverages, in accordance with the forms that we received from you.

This petitioner respectfully informs the Treasurer that in its opinion law No. 115 of May 15th, 1936 contains provisions which are unconstitutional or otherwise illegal, and the applicant therefore reserves its constitutional right to submit to the courts the

validity or legality of any section a part of this or any other law or regulation whenever it deems it advisable.

Very respectfully,

J. M. BOSCH,

Vice President.

JMB-aaf

EXHIBIT AF FOR PLAINTIFF.

[SEAL OF U. S.]

United States of America

Treasury Department

Washington, December 31, 1937.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States) I hereby certify that the annexed

Regulations No. 3, Relating to Bulk Sales and Bottling of Distilled Spirits, and

Regulations No. 5, Relating to Labeling and Advertising of Distilled Spirits are true and correct copies of the originals on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury.

S. H. Marks

Actg. Chief Clerk, Treasury Department

[Seal of the Crw. Treasury Department]

Treasury Department

Federal Alcohol Administration

Regulations No. 5

LABELING AND ADVERTISING OF DISTILLED SPIRITS

As Amended to August 11, 1936

(Regulations are not copied as printed copies may be obtained)

Treasury Department
Federal Alcohol Administration
Regulations No. 3

BULK SALES AND BOTTLING OF DISTILLED SPIRITS

December 1935

(Regulations are not copied as printed copies may be obtained)

**TREASURY DEPARTMENT
FEDERAL ALCOHOL ADMINISTRATION**

REGULATIONS No. 5

RELATING TO

**LABELING AND ADVERTISING
OF DISTILLED SPIRITS**

**UNDER THE PROVISIONS OF THE
FEDERAL ALCOHOL ADMINISTRATION ACT, APPROVED
AUGUST 29, 1935 (PUBLIC, No. 401, 74th CONGRESS)**

AS AMENDED TO AUGUST 11, 1936



**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936**

REGULATIONS RELATING TO LABELING AND ADVERTISING OF DISTILLED SPIRITS

ARTICLE I. DEFINITIONS

As used in these regulations—

- (a) The term "Act" means the Federal Alcohol Administration Act.
- (b) The term "Administration" means the Federal Alcohol Administration.
- (c) The term "Administrator" means the head of the Federal Alcohol Administration.
- (d) The term "permittee" means any person holding a basic permit under the Federal Alcohol Administration Act.
- (e) The term "distilled spirits" means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum; brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.
- (f) The term "bottle" means any container, irrespective of the material from which made, used for the sale of distilled spirits at retail.
- (g) The term "in bulk" means in containers having a capacity in excess of one wine gallon.
- (h) The term "gallon" means United States gallon of 231 cubic inches of alcoholic beverage at 68° F. (20° C.). All other liquid measures used are subdivisions of the gallon as so defined.
- (i) The term "brand label" means the label carrying, in the usual distinctive design, the brand name of the distilled spirits.
- (j)² The term "age" means the period during which, after distillation and before bottling, distilled spirits have been kept in oak containers, charred if for a whiskey of American type other than corn whiskey, straight corn whiskey, blended corn whiskey, or a blend of straight corn whiskeys. In the case of American type whiskeys produced on or after July 1, 1936, other than corn whiskey, straight corn whiskey, blended corn whiskey, and blends of straight corn whiskey, "age" means the period during which the whiskey has been kept in charred new oak containers.

(k) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(l) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(m) The term "person" means any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(n) Any other term defined in the Federal Alcohol Administration Act and used herein shall have the same meaning assigned to it by such Act.

ARTICLE II. STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

SEC. 20. *Application of standards.*—The standards of identity for the several classes and types of distilled spirits set forth herein shall be applicable to all regulations and permits issued under the Act. Whenever any term for which a standard of identity has been established herein is used in any such regulation or permit, such term shall have the meaning assigned to it by such standard of identity.

SEC. 21. *The standards of identity.*—Standards of identity for the several classes and types of distilled spirits set forth herein shall be as follows:

CLASS 1. *Neutral spirits or alcohol.*—"Neutral spirits" or "alcohol" are distilled spirits distilled from any material at or above 190° proof, whether or not such proof is subsequently reduced.

CLASS 2. *Whiskey.*—(a) "Whiskey" is an alcoholic distillate from a fermented mash of grain distilled at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whiskey, and withdrawn from the cistern room of the distillery at not more than 110° and not less than 80° proof, whether or not such proof is further reduced prior to bottling to not less than 80° proof; and also includes mixtures of the foregoing distillates for which no specific standards of identity are prescribed herein. "Rye whiskey", "bourbon whiskey", "wheat whiskey", "corn whiskey", "malt whiskey", or "rye malt whiskey" is whiskey which has been distilled at not exceeding 160° proof from a fermented mash of not less than 51% rye grain, corn grain, wheat grain, corn grain, malted barley grain or malted rye grain.

respectively, and also includes mixtures of such whiskeys where the mixture consists exclusively of whiskeys of the same type.

(b) "Straight whiskey" is an alcoholic distillate from a fermented mash of grain distilled at not exceeding 160° proof and withdrawn from the cistern room of the distillery at not more than 110° and not less than 80° proof, whether or not such proof is further reduced prior to bottling to not less than 80° proof, and is—

- (1) Aged for not less than twelve calendar months if bottled on or after July 1, 1936, and before July 1, 1937; or
- (2) Aged for not less than eighteen calendar months if bottled on or after July 1, 1937, and before July 1, 1938; or
- (3) Aged for not less than twenty-four calendar months if bottled on or after July 1, 1938.

The term "straight whiskey" also includes mixtures of straight whiskey which, by reason of being homogeneous, are not subject to the rectification tax under the Internal Revenue Laws.

(c) "Straight rye whiskey" is straight whiskey distilled from a fermented mash of grain of which not less than 51% is rye grain.

(d) "Straight bourbon whiskey" and "straight corn whiskey" are straight whiskey distilled from a fermented mash of grain of which not less than 51% is corn grain.

(e) "Straight wheat whiskey" is straight whiskey distilled from a fermented mash of grain of which not less than 51% is wheat grain.

(f) "Straight malt whiskey" and "straight rye malt whiskey" are straight whiskey distilled from a fermented mash of grain of which not less than 51% of the grain is malted barley or malted rye, respectively.

(g) "Blended whiskey" (whiskey—a blend) is a mixture which contains at least 20% by volume of 100 proof straight whiskey and, separately or in combination, whiskey or neutral spirits, if such mixture at the time of bottling is not less than 80° proof.

(h) "Blended rye whiskey" (rye whiskey—a blend), "Blended bourbon whiskey" (bourbon whiskey—a blend), "Blended corn whiskey" (corn whiskey—a blend), "Blended wheat whiskey" (wheat whiskey—a blend), "Blended malt whiskey" (malt whiskey—a blend) or "Blended rye malt whiskey" (rye malt whiskey—a blend) is blended whiskey which contains not less than 51% by volume of straight rye whiskey, straight bourbon whiskey, straight corn whiskey, straight wheat whiskey, straight malt whiskey, or straight rye malt whiskey, respectively.

(i) "A blend of straight whiskeys" (blended straight whiskeys), "A blend of straight rye whiskeys" (blended straight rye whiskeys), "A blend of straight bourbon whiskeys" (blended straight bourbon

whiskeys), "A blend of straight corn whiskeys" (blended straight corn whiskeys), "A blend of straight wheat whiskeys" (blended straight wheat whiskeys), "A blend of straight malt whiskeys" (blended straight malt whiskeys), and "A blend of straight rye malt whiskeys" (blended straight rye malt whiskeys) are mixtures of only straight whiskeys, straight rye whiskeys, straight bourbon whiskeys, straight corn whiskeys, straight wheat whiskeys, straight malt whiskeys, or straight rye malt whiskeys, respectively.

(j) "Spirit whiskey" is a mixture (1) of neutral spirits and not less than 5%, by volume of whiskey, or (2) of neutral spirits and less than 20% by volume of straight whiskey, but not less than 5% by volume of straight whiskey, or of straight whiskey and whiskey, if the resulting product at the time of bottling be not less than 80° proof.

(k) "Scotch whiskey" is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of Great Britain regulating the manufacture of Scotch whiskey for consumption in Great Britain, and containing no distilled spirits less than three years old: *Provided*, That if in fact such product as so manufactured is a mixture of distilled spirits, such mixture is "Blended Scotch whiskey" (Scotch whiskey—a blend). "Scotch whiskey" shall not be designated as "straight."

(l) "Irish whiskey" is a distinctive product of Ireland, manufactured either in the Irish Free State or in Northern Ireland, in compliance with the laws of those respective territories regulating the manufacture of Irish whiskey for consumption in such territories, and containing no distilled spirits less than three years old: *Provided*, That if in fact such product as so manufactured is a mixture of distilled spirits, such whiskey is "Blended Irish whiskey" (Irish whiskey—a blend). "Irish whiskey" shall not be designated as "straight."

(m) "Canadian whiskey" is a distinctive product of Canada, manufactured in Canada in compliance with the laws of the Dominion of Canada regulating the manufacture of whiskey for consumption in Canada, and containing no distilled spirits less than two years old: *Provided*, That if in fact such product as so manufactured is a mixture of distilled spirits, such whiskey is "Blended Canadian whiskey" (Canadian whiskey—a blend). "Canadian whiskey" shall not be designated as "straight."

(n) "Blended Scotch type whiskey" (Scotch type whiskey—a blend) is a mixture made outside Great Britain and composed of—

(1) Not less than 20% by volume of 100° proof malt whiskey or whiskeys distilled in pot stills at not more than 160° proof,

from a fermented mash of malted barley dried over peat fire, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof, and

(2) Not more than 80% by volume of neutral spirits, or whiskey distilled at more than 180° proof, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof.

(c)* “Blended Irish type whiskey” (Irish type whiskey—a blend) is a product made outside Great Britain or the Irish Free State and composed of—

(1) A mixture of distilled spirits distilled in pot stills at not more than 171° proof, from a fermented mash of small cereal grains of which not less than 50% is dried malted barley, and unmalted barley, wheat, oats, or rye grains, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof; or

(2) A mixture consisting of not less than 20% by volume of 100° proof malt whiskey or whiskeys distilled in pot stills at approximately 171° proof, from a fermented mash of dried malted barley, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof; and

(3) Not more than 80% by volume of neutral spirits, or whiskey distilled at more than 180° proof, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof.

CLASS 3. *Gins*.²—(a) “Distilled gin” is a distillate obtained by original distillation from mash, or by the redistillation of distilled spirits, over or with juniper berries and other aromatics customarily used in the production of gin, and deriving its main characteristic flavor from juniper berries and reduced at time of bottling to not less than 80° proof; and includes mixtures solely of such distillates.

(b) “Compound gin” is the product obtained by mixing neutral spirits with distilled gin or gin essence or other flavoring materials customarily used in the production of gin, and deriving its main characteristic flavor from juniper berries and reduced at time of bottling to not less than 80° proof; and includes mixtures of such products.

(c) “Dry Gin”, “London Dry Gin”, “Hollands Gin”, “Geneva Gin”, “Old Tom Gin”, “Tom Gin”, and “Buchu Gin” are the types of gin known under such designations, and shall be further designated as “distilled” or “compound”, as the case may be.

*Amended July 8, 1936.

²Amended July 20, 1936.

CLASS 4. Brandies.—(a) “Brandy” is a distillate, or a mixture of distillates, obtained solely from the fermented juice or mash of fruit (1) distilled at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to brandy; and (2) bottled at not less than 80° proof; and shall also include such distillates, aged for a period of not less than fifty years, and bottled at not less than 72° proof, in cases where the reduction in proof below 80° is due solely to losses resulting from natural causes during the period of aging.

(b) “Brandy,” without appropriate qualifying words, or “Grape Brandy,” is the distillate obtained from grape wine or wines under the conditions set forth in subsection (a) of this class, and includes mixtures solely of such distillates.

(c) “Apple brandy” (Apple jack), “Peach brandy”, “Cherry brandy”, “Apricot brandy”, “Orange brandy”, “Raisin brandy”, and other fruit brandies are distillates obtained from the fermented juice or mash of the respective fresh or dried or otherwise treated fruits under the conditions set forth in subsection (a) of this class, and includes mixtures composed wholly of one kind of such distillates. The designation shall contain the name of the fruit used, and if other than whole fresh fruit is used, the word “Dried” or such other term as may be appropriate. Brandy derived from raisins shall be designated as “Raisin brandy.”

(d) “Cognac” or “Cognac brandy” is grape brandy distilled in the Cognac Region of France, which is entitled to be designated as “Cognac” by the laws and regulations of the French Government; and includes mixtures of such brandy.

CLASS 5. Rum.—(a) “Rum” is any alcoholic distillate from the fermented juice of sugarcane, sugarcane sirup, sugarcane molasses, or other sugarcane byproducts distilled at less than 190° proof (whether or not such proof is further reduced prior to bottling to not less than 80° proof) in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to rum; and includes mixtures solely of such distillates.

(b) “New England rum” is rum as above defined, except that it is produced in the United States, is distilled at less than 160° proof, and is a straight rum and not a mixture of rums.

(c) Puerto Rico, Cuba, Demerara, Barbados, St. Croix, St. Thomas, Virgin Islands, Jamaica, Martinique, Trinidad, Haiti, and San Domingo rum are not distinctive types of rum. Such names are not generic but retain their geographic significance. They may not be applied to rum produced in any other place than the par-

²Amended July 8, 1936.

ticular region indicated in the name, and may not be used as a designation of a product as rum, unless such product is rum as defined in subsection (a).

CLASS 6. *Cordials and liqueurs.*—(a) Cordials and Liqueurs are products obtained by mixing or redistilling neutral spirits, brandy, gin, or other distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials, and to which sugar or dextrose or both have been added in an amount not less than 2½% by weight of the finished product. Synthetic or imitation flavoring materials shall not be included.

(b) "Sloe gin" is a cordial or liqueur with the main characteristic flavoring derived from sloe berries.

(c) Cordials and liqueurs shall not be designated as "distilled" or "compound."

(d) *Dry cordials and dry liqueurs.*—The designation of a cordial or liqueur may include the word "Dry" if the added sugar and dextrose are less than 10% by weight of the finished product.

CLASS 7. *Imitations.*—(a) *General.*—Imitations include distilled spirits of any class or type, containing added rye or bourbon essence or similar whiskey flavoring material, or colored or flavored in such a manner as to simulate any other class or type of distilled spirits, and shall be designated by the name of such other class or type of distilled spirits immediately preceded by the word "Imitation." Subsections (b), (c), and (d) of this class specify imitations in addition to the foregoing.

(b) *Imitation brandy.*—(1) Neutral spirits or other distilled spirits which have added thereto or which contain synthetic or imitation brandy flavoring materials, (2) brandy which has added thereto neutral spirits or other distilled spirits than brandy, and (3) a distillate obtained from a fermented mash of fruit and sugar or dextrose are "imitation brandy", and shall be so designated.

(c) *Imitation rum.*—(1) Neutral spirits or other distilled spirits which have added thereto or which contain synthetic or imitation rum flavoring materials, and (2) rum which has added thereto neutral spirits or other distilled spirits than rum are "imitation rum", and shall be so designated.

(d) *Imitation cordials and liqueurs.*—Neutral spirits, brandy, gin, or other distilled spirits which have added thereto or which contain synthetic or imitation fruit, flower, plant, or other imitations of natural flavoring materials shall not include in the designation thereof the name of such fruit, flower, plant, or other natural flavoring material, unless immediately preceded by the word "Imitation."

(c) *Harmless coloring or flavoring materials.*—Notwithstanding the foregoing subsections of this class, the addition of harmless coloring or flavoring materials, such as burnt sugar and blending materials (including straight malt whiskey, or straight rye malt whiskey), in a total amount not in excess of 2½% of the distilled spirits by volume, shall not, except in the case of straight whiskey, alter the class or type of any distilled spirits, provided such coloring and flavoring materials do not have the effect of imitating any class or type of distilled spirits. Whether or not distilled spirits containing such materials in excess of such total amount are imitations shall be governed by the provisions of subsection (a) of this class.

CLASS 8. *Geographical designations.*—(a) Geographical names for distinctive types of distilled spirits (other than names found by the Administrator under subsection (b) to have become generic) shall not be applied to distilled spirits produced in any other place than the particular region indicated by the name, unless (1) in direct conjunction with the name there appears the word “type” or the word “American,” or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name, and (2) the distilled spirits to which the name is applied conform to the distilled spirits of that particular region. The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Eau de Vie de Dantzic (Danziger Goldwasser), Ojen, Swedish Punch, Blended Scotch Whiskey, Blended Irish Whiskey, Blended Canadian Whiskey. Geographical names for distinctive types of distilled spirits shall be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in this article, or if no such standard is so specified, then in accordance with the trade understanding of that distinctive type. Such geographical names for distinctive types of distilled spirits shall not be used as the name or a part of the name for distilled spirits not of that distinctive type.

(b) Only such geographical names for distilled spirits as the Administrator finds have by usage and common knowledge lost their geographical significance to such extent that they have become generic, shall be deemed to have become generic. The following are examples of distinctive types of distilled spirits with geographical names that have become generic: London Dry Gin, Geneva Gin, Hollands Gin, Tequila.

(c) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. The following are examples of geographical names for distilled spirits that are not generic and are not names for distinctive types of distilled spirits:

Cognac, Armagnac, Greek Brandy, Pisco Brandy, Jamaica Rum, Kentucky Straight Bourbon Whiskey, Maryland Straight Rye Whiskey.

CLASS 9. *Products without geographical designations but distinctive of a particular place.*—(a) The whiskeys of the types specified in paragraphs (a) to (j), inclusive, of class 2 of this article, are distinctive products of the United States, and if produced in a foreign country, shall be designated by the applicable designation prescribed in such paragraph, together with the words "American Type" or the words "Produced (Distilled, Blended) in _____", the blank to be filled in with the name of the foreign country.

(b) The name for other distilled spirits which are distinctive products of a particular place or country shall not be given to the product of any other place or country unless the designation for such product includes the word "Type" or an adjective such as "American" or the like, clearly indicating the true place of production. This paragraph shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that they have become generic, provided the approval of the Administrator is obtained prior to using such designation. An example of a product which is a distinctive product of a particular place or country and which has not become generic is the following: Habanero. Examples of products which have lost their geographical significance to such an extent that they are no longer distinctive products of a particular place or country, but have become generic, are the following: Vodka, Slivovitz, Zubrovka, Aquavit, Arrack, and Kirschwasser.

ARTICLE III. LABELING REQUIREMENTS FOR DISTILLED SPIRITS

SEC. 30. *General*—(a) *Application of this article.*—No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any distilled spirits in bottles, unless such distilled spirits are packaged, and such packages are marked, branded, or labeled in conformity with this article. Distilled spirits domestically bottled prior to August 15, 1936,¹ and imported distilled spirits entered in customs bond in bottles prior to that date shall be regarded as being packaged, marked, branded, and labeled in accordance with this article, if the labels on such distilled spirits (1) bear all the mandatory label information required by Section

¹As amended Feb. 20, 1936. Prior to the amendment and as originally promulgated, the date "August 15, 1936" read "March 1, 1936."

32 below even though such information is not set forth in the manner and form as required by Section 32 and the other sections of this article referred to therein, and (2) bear no statements, designs, or devices which are false or misleading.

(b) Alteration of labels.—

- (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law: *Provided*, That the Administrator may, upon written application, permit additional labeling or relabeling of bottled distilled spirits if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of this article or of State law.
- (2) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels together with a statement of the reasons for relabeling; the quantity and the location of the distilled spirits, and the name, address, and permit number of the person by whom they will be relabeled.

SEC. 31. Misbranding.—Distilled spirits in bottles shall be deemed to be misbranded—

(a) If the bottle fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by this article and conforming to the general requirements specified herein.

(b) If the bottle or any label on the bottle, or any individual covering, carton, or other container of the bottle used for sale at retail, other than a shipping container, or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by this article.

(c) If the bottle is in an individual covering, carton, or other container used for sale at retail, other than a shipping container, displaying thereon any written, printed, graphic, or other matter, other than the name and address of the manufacturer, importer, or person by whom bottled (and in addition the name and address of the person for whom bottled), and such individual covering, carton, or other container obscures the mandatory label information required to be stated and such individual covering, carton, or other container fails to reproduce on it, in the same manner, all information so obscured; or if any statement required by this article to appear upon the label, or upon such individual covering, carton, or other con-

tainer of the bottle, is obscured in any other manner or is modified in any manner.

SEC. 32. *Mandatory label information.*—There shall be stated—

(a) On the brand label—

- (1) Brand name, in accordance with Section 33 below.
- (2) Class and type, in accordance with Section 34 below.
- (3) Name and address, in accordance with Section 35 below, except as provided in (b) hereof.

(b) On the brand label or on a separate label (back or front)—

- (4) In case of imported distilled spirits, name and address of importer, in accordance with Section 35 below.
- (5) In the case of distilled spirits bottled for the holder of a permit or a retailer, the name and address of the distiller, blender, or bottler, in accordance with Section 35 below.

(c) On a separate label (for the purpose of these regulations to be known as the Government label), in such manner and form as shall be prescribed by the Administrator—

- (6) Alcoholic content, in accordance with Section 36 below.
- (7) Net contents, in accordance with Section 37 below.
- (8) Artificial or excessive coloring or flavoring, in accordance with Section 38 below.
- (9) Percentage of neutral spirits and name of commodity from which distilled, or in case of continuously distilled neutral spirits or gin the name of the commodity only, in accordance with Section 38 below.
- (10) Age of whiskey and straight whiskey, and respective percentages of whiskey, straight whiskey, and neutral spirits, in accordance with Section 39 below.
- (11) State of distillation of domestic types of whiskey and straight whiskey, except blends, in accordance with Section 35 below.

The mandatory information required by any of the subdivisions of subsection (c) to be stated on a separate label may, if desired, reappear or be restated on the brand label, in which event there shall also reappear or be restated all information required to be stated in conjunction therewith by such separate subdivision and the section to which such subdivision refers. If it is desired, all of the mandatory information required by subsection (c) may appear on the brand label in lieu of a separate label.

SEC. 33. *Brand names.*—(a) *General.*—The distilled spirits shall bear a brand name, except that if distilled spirits are not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this article.

(b) *Brand names of geographical significance.*—The word "Brand" shall be stated in direct conjunction with a brand name containing a geographical name or adjective as a part or the whole thereof, in type at least one-half the size of the type in which such geographical name or adjective appears on the label, unless such distilled spirits were in fact produced in such place: *Provided*, That if such product was not in fact produced in the place or region indicated by such brand name, and the Administrator finds that the general appearance of the label, or any statement, design, or device appearing thereon, tends to create the impression that the product is of foreign origin or was produced in a place or region other than that of actual production, he may require, in addition to the word "Brand", other appropriate language which will indicate the true place of production.

(c) This section shall not apply to the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least five years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, it shall be qualified by the name of the locality in the United States in which the product is produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand which it qualifies and shall be in direct conjunction therewith.

SEC. 34. *Class and type.*—(a) The class of the distilled spirits shall be stated. If the particular distilled spirits are a type of such class and if such type is defined in Article II of these regulations, then such type shall also be stated. The class or type stated shall be in conformity with Article II of these regulations, if such class or type is defined therein. If either the class or type stated is not defined in Article II of these regulations, then any statement of such class or type shall be in conformity with the trade designation of such product, if such designation has not been adopted in Article II of these regulations as the designation of another product: *Provided*, That if there is no trade designation, the product shall be given a distinctive or fanciful name, or an accurate and truthful statement of its true composition shall be made on the brand label. Notwithstanding the foregoing provisions of this section, the words "cordial" or "liqueur" need not be stated to indicate the class of distilled spirits which in fact are cordials or liqueurs, unless the Administrator finds that, without a designation of the class, the type designation is one which does not clearly indicate to the consumer that the product is a cordial or liqueur.

(b)² The labeling of any bottled highballs, cocktails, gin fizzes, and other prepared specialties shall state, in conformity with subsection (a), the classes and types of distilled spirits used in the manufacture thereof. Any such statement of class and type may, but need not, be stated as part of the designation of the product. If not made a part of the designation of the product, then such class and type statement shall be stated elsewhere upon the brand label or on a separate label affixed in immediate proximity thereto on the same side of the bottle.

(c) On labels of cordials and liqueurs, the type of distilled spirits used for mixing or redistillation, and the percentage of each type thereof, may, but need not, be stated. Any such statement shall be substantially in accordance with the following examples: Apricot liqueur—the distilled spirits used are all apricot brandy; Cherry cordial—the distilled spirits used are all grape brandy; Pineapple liqueur—the distilled spirits used are 30% distilled London dry gin, 70% neutral spirits.

SEC. 35. *Name and address.*—(a) "*Distilled by.*"—On labels of domestic distilled spirits bottled by or for the actual distiller thereof, there shall be stated the words "distilled by", and immediately thereafter the name of such distiller and the place where distilled.

(b) "*Blended by*", "*Made by*", "*Prepared by*", "*Manufactured by*", or "*Produced by.*"—On labels of domestic distilled spirits bottled by or for the actual rectifier thereof, there shall be stated the words "blended by", "made by", "prepared by", "manufactured by", or "produced by", whichever may be applicable, and immediately thereafter the name of the rectifier and the place where blended, made, or prepared.

(c)² "*Imported by.*"—

(1) On labels of imported distilled spirits, bottled prior to importation, there shall be stated the words "imported by", "imported exclusively by", or a similar appropriate phrase, and immediately thereafter the name of the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person.

(2) On labels of imported distilled spirits bottled after importation by a person other than the person responsible for the importation, there shall be stated, in the manner and form prescribed above, the name and address of the person responsible for the importation, and in addition thereto the words "bottled by", and immediately thereafter, the name of the bottler and the place where bottled.

²Amended July 8, 1938.

(3) On labels of imported distilled spirits bottled after importation by the person responsible for the importation, there shall be stated the words "imported and bottled by", "imported and bottled exclusively by", or a similar appropriate phrase, and immediately thereafter, the name of the bottler and the place where bottled.

(4) The statements provided for domestic distilled spirits by subsections (a) and (b), if applicable, may, but need not, appear on labels of imported bottled distilled spirits, unless required by State or foreign law or regulation. If required by State or foreign law or regulation, they shall appear in accordance with the requirements thereof.

(d) "*Bottled by.*"—On labels of domestic distilled spirits bottled without taxable rectification by the holder of a warehousing and bottling permit, or by any State or political subdivision thereof, who is not the actual distiller or rectifier of such distilled spirits, there shall be stated the words "Bottled by", and immediately thereafter the name of the bottler and the place where bottled.

(e)² "*Bottled for.*"—In addition to the requirements of (a), (b), (c) and (d) of this section, on labels of distilled spirits bottled for the holder of a permit, or a retailer, who is not the actual distiller or rectifier of such distilled spirits, there may be stated the name and address of the permittee or retailer for whom such distilled spirits are so bottled, immediately preceded by the words "bottled for", or "distributed by", or other similar statement.

(f) *Post office address.*—The "place" stated shall be the post office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, firm, or corporation, unless (1) such person or retailer is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product.

(g) *State of distillation.*—On labels of whiskey and straight whiskey there shall be stated the State of distillation of such whiskey, if such whiskey is not distilled in the State given in the address on the brand label. Notwithstanding the provisions of Section 32 (c), the statement of the State of distillation shall appear on the brand label in all cases where the Administrator finds that without such statement the label is misleading as to the State of actual distillation.

²Amended July 8, 1936.

(h) *Trade names.*—The trade name of any permittee appearing upon any label shall be identical with the name in which his basic permit is issued by the Administrator.

SEC. 36. *Alcoholic content.*—(a) The alcoholic content by proof shall be stated for distilled spirits except as provided in subsection (b) of this section.

(b) The alcoholic content in percentage by volume or by proof shall be stated for cordials and liqueurs, and gin fizzes, cocktails, highballs, bitters, and such other specialties as may be specified by the Administrator from time to time.

SEC. 37. *Net contents.*—(a) The net contents shall be stated as follows:

- (1) If one pint, one quart, or one gallon, the net contents shall be so stated.
- (2) If less than a pint, the net contents shall be stated in fractions of a pint.
- (3) If more than a pint, but less than a quart, the net contents shall be stated in fractions of a quart.
- (4) If more than a quart, but less than a gallon, the net contents shall be stated in fractions of a gallon.

(b) All fractions shall be expressed in their lowest denomination.

(c) The net contents need not be stated on any label if the net contents are displayed by having the same blown in the bottle on the same side of the bottle as the brand label, in letters and figures in such manner as to be plainly legible under ordinary circumstances, and such statement is not obscured in any manner in whole or in part. The letters and figures shall be not less than one-quarter inch in height, except in case of bottles having a capacity of less than one-half pint, in which case the letters and figures shall be of such size as to be readily legible under ordinary conditions.

SEC. 38. *Presence of neutral spirits and coloring, flavoring, and blending materials.*—(a) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: “-----% neutral spirits distilled from grain”; or “-----% neutral spirits distilled from cane products”; or “-----% neutral spirits distilled from fruit”; or “-----% grain (cane products), (fruit) neutral spirits.”

(b) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled.

The statement of the name of the commodity shall be made in substantially the following form: "Distilled from grain", or "Distilled from cane products", or "Distilled from fruit".

(c) If the aggregate amount of coloring, blending, smoothing, or flavoring materials in any distilled spirits other than cordials, liqueurs, gin, gin fizzes, highballs, bitters, and such other specialties as may be specified by the Administrator from time to time, is in excess of $2\frac{1}{2}\%$ by volume of the distilled spirits contained in the bottle, then the name and amount in percent by volume of each of such materials shall be stated.

(d) There shall be stated the words "artificially colored" on the label of any distilled spirits containing synthetic or imitation coloring materials: *Provided*, That this statement shall not be required by reason of the use of caramel in coloring any type of whiskey (not including straight whiskey) brandy, or rum.

(e) The presence of beading oil in any type of whiskey shall be stated.

SEC. 39. Statements of age and percentage.—(a) *Statement of age and percentage for whiskey.*—There shall be stated in the case of whiskey (except Scotch, Irish, and Canadian and blended Scotch, Irish, and Canadian whiskey, as defined in Article II, section 21, class 2, and except straight whiskey bottled under the Bottling in Bond Act of the United States, in which cases statement of age shall be optional) the following:

(1) *Whiskey.*—In the case of whiskey (as defined in Article II, Section 21, Class 2 (a)), if not mixed, the age of the whiskey; if mixed, the age of the youngest whiskey. The statement of age in both cases under this paragraph shall be as follows: "This whiskey is — months old."

(2) *Straight whiskey.*—In the case of any of the types of straight whiskey, the age of the straight whiskey. The statement of age in cases under this paragraph shall be as follows: "This whiskey is — (years and/or months) old."

(3) *Blended whiskey.*—In case of any of the types of blended whiskey as defined in Article II, Section 21, Class 2 (g) and (h), the age of the straight whiskey (or if there be two or more straight whiskeys, then of the youngest thereof) and the age of the other whiskey (or if there be two or more other whiskeys, then of the youngest of such other whiskeys) together with the percentage by volume of straight whiskey, other whiskey, and neutral spirits, therein.

The statement of age in cases under this paragraph shall be as follows, in accordance with the ingredients used. If only one straight whiskey and one other whiskey is in the blend, the statement of the age shall read "The straight whiskey in this product is ----- (years and/or months) old, -----% straight whiskey, -----% other whiskey ----- (years and/or months) old." The age blanks shall be filled in with the respective ages of the straight whiskey and the other whiskey. If more than one straight whiskey and more than one other whiskey is in the blend, the statement of age shall read "The straight whiskeys in this product are ----- (years and/or months) or more old, -----% straight whiskey, -----% other whiskey ----- (years and/or months) or more old." The age blanks shall be filled in with the ages of the youngest straight whiskey and the youngest of the other whiskeys. If neutral spirits have been used in the blend, the statement thereof shall appear in immediate conjunction with the statement of age and percentage amounts of straight whiskey and other whiskey (if any) and shall be in the form required by Section 38 (a).

In addition (but not as a substitute for the foregoing required statements) a statement may be made of the ages and percentages of all of the straight whiskeys in the blend. Such statements, if made, shall read "-----% straight whiskey, ----- years old, -----% straight whiskey, ----- years old, and -----% straight whiskey, ----- years old." The age and percentage blanks shall be filled in with the respective ages and percentages of all of the straight whiskeys in the blend.

(4) *Blends of straight whiskeys.*—If the product is a blend of straight whiskeys, the age of the youngest straight whiskey. The statement of age under this paragraph shall be as follows: "The straight whiskeys in this product are ----- (years and/or months) or more old." The blank shall be filled in with the age of the youngest straight whiskey in the blend. In addition (but not as a substitute for the foregoing required statement) a statement may be made of the ages and percentages of all of the straight whiskeys in the blend. Such statements, if made, shall read: "-----% straight

whiskey, ----- years old, -----% straight whiskey, ----- years old, and -----% straight whiskey, ----- years old." The age and percentage blanks shall be filled in with the respective ages and percentages of all of the straight whiskeys in the blend.

(5) *Spirit whiskey.*—In the case of spirit whiskey, the age of the whiskey or straight whiskey (or if there be two or more whiskeys or straight whiskeys, then the youngest whiskey or straight whiskey) together with the percentage by volume of the whiskey or straight whiskey and the percentage by volume of neutral spirits. Such statement shall be as follows: "The whiskey (straight whiskey) in this product is ----- (years and/or months) old; -----% straight whiskey, -----% whiskey, and -----% neutral spirits (continuing in accordance with the requirements of Sec. 38 (a) to state the commodity from which the neutral spirits is derived)." If there be either no straight whiskey or whiskey in product, the percentage statement with respect thereto shall be omitted.

(6) *Imported American type whiskeys.*—In the case of imported American type whiskeys (as defined in Article II, Section 21, Class 9) the labels shall state the ages and percentages in the same manner and form as is required for the same type of whiskey produced in the United States.

(b) *Statements of Age for Rum, Brandy, Scotch, Irish, and Canadian Whiskeys, and Blended Scotch, Blended Irish, and Blended Canadian Whiskeys.*—

(1) Age may, but need not, be stated on labels of rums, brandies, Scotch whiskeys, Irish whiskeys, Canadian whiskeys, blended Scotch whiskeys, blended Irish whiskeys, and blended Canadian whiskeys, as defined in Article II of these regulations.

(2) If age is stated, it shall be substantially as follows: "This rum is ----- years old"; "This brandy is ----- years old"; "This whiskey is ----- years old"; the blanks to be filled in with the age of the youngest distilled spirits in the product.

(c) *Statements of Age and Percentage for Blended Scotch Type Whiskey and Blended Irish Type Whiskey.*—

(1) In the case of blended Scotch type whiskey, there shall be stated the age of the youngest malt whiskey and the

age of the youngest other whiskey, together with the percentages by volume of the malt whiskey and of the other whiskey therein. The statement of age and percentage shall be in the following form: "The malt whiskey in this product is ----- (years and/or months) old; -----% malt whiskey, -----% other whiskey, ----- (years and/or months) old." If the product is composed of malt whiskey and neutral spirits, there shall be stated the age of the youngest malt whiskey, together with the percentage by volume of malt whiskey and the percentage by volume of neutral spirits. Such statement shall be in the following form: "The malt whiskey in this product is ----- (years and/or months) old; -----% malt whiskey, -----% neutral spirits (continuing in accordance with the requirements of Sec. 38 (a) to state the commodity from which the neutral spirits is derived)."

(2) In the case of blended Irish type whiskey, as defined in Article II, Section 21, Class 2 (o) (1), there shall be stated the age of the youngest whiskey. The statement of age shall be as follows: "This whiskey is ----- (years and/or months) old."

(3) In the case of blended Irish type whiskey, as defined in Article II, Section 21, Class 2 (o) (2), there shall be stated the age of the youngest malt whiskey and the age of the youngest other whiskey, together with the percentages by volume of the malt whiskey and of the other whiskey therein. The statement of age and percentage shall be in the following form: "The malt whiskey in this product is ----- (years and/or months) old; -----% malt whiskey, -----% other whiskey, ----- (years and/or months) old." If the product is composed of malt whiskey and neutral spirits, there shall be stated the age of the youngest malt whiskey, together with the percentage by volume of malt whiskey and the percentage by volume of neutral spirits. Such statement shall be in the following form: "The malt whiskey in this product is ----- (years and/or months) old; -----% malt whiskey, -----% neutral spirits (continuing in accordance with the requirements of Sec. 38 (a) to state the commodity from which the neutral spirits is derived)."

(d) *Other distilled spirits.*—Age, maturity, or similar statements or representations as to neutral spirits, gin, liqueurs, cordials, vodka,

cocktails, gin fizzes, highballs, bitters, and specialties are misleading and are prohibited from being stated on any label.

(e) *Miscellaneous age representations.*—

(1) If the age of any product for which age is required to be stated is in excess of one year, months in excess of a year may be omitted, and if the age is less than one month, the age shall be stated as "Less than one month" in lieu of "----- (years and/or months)."

(2) Age may be understated but may not be overstated.

(3) Any permissive additional statements as to age shall appear on the same labels as the required statements and only in direct conjunction therewith and in substantially the same size and kind of print. Any such additional permissive statements as to age not in direct conjunction with the required statements are prohibited, and all statements as to age other than the required statements, the additional permissive statements, and the optional statements for distilled spirits are prohibited. Additional permissive age and percentage statements shall not be given prominence, either by position or color, over required age and percentage statements.

(4) Variations in the form of the required statements or the additional permissive statements as to age and percentages are prohibited.

(5) *Use of the word "old", or other representations as to age.*—

If any age, maturity, or similar representation (including words or devices in any brand name or mark) is made relative to any distilled spirits (except neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, and bitters), the age shall also be stated on all labels where such representation appears, and in script, type, or printing substantially as conspicuous as such representation. Age, maturity, or similar representations as to neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, and bitters, are misleading, and shall not appear upon any label, except that the use of the word "old" or other word denoting age, appearing as part of the brand name, shall not be deemed to be an age representation in the case of such distilled spirits, or in the case of distilled spirits bottled in bond under the Bottling in Bond Act of the United States. As to all other distilled spirits, the word "old" or other word denoting

age, appearing as part of the brand name, shall be deemed to be an age representation unless the word "brand" appears in direct conjunction with such brand name in letters of equally conspicuous color and at least one-half the size of the type in which such brand name is printed.

SEC. 40. *General requirements.*—(a) *Contrasting background.*—All labels shall be so designed that all the statements thereon required by this article are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) *Size of type.*—All statements required on labels by this article shall be in readily legible script, type, or printing not smaller than eight-point Gothic caps, except that if contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be of a size substantially more conspicuous than such other descriptive or explanatory reading matter: *Provided*, That in the case of labels on bottles having a capacity of less than one-half pint, such script, type, or printing thereon need not be in eight-point Gothic caps, but shall be readily legible under ordinary conditions. All statements of the type of distilled spirits shall be in script, type, or printing substantially as conspicuous as the statement of the class to which it refers, and in direct conjunction therewith.

(c) *English language.*—All the requirements of this article shall be stated on all labels in the English language: *Provided*, That the brand name, the place of production, and the name of the producer appearing on labels need not be in the English language if the words "product of" immediately precede the name of the country in which the distilled spirits were produced in accordance with customs requirements. Additional statements in foreign languages may be made on labels, if no such statements conflict with, or are contradictory to, the requirements of this article. Labels on bottles of distilled spirits bottled for consumption within Puerto Rico may, if desired, state the information required by this article solely in the Spanish language, in lieu of the English language, except that the net contents, and, if an imitation, the word "imitation" shall also be stated in the English language.

(d) *Location of label.*—No label other than stamps authorized or required by the United States Government or any other government, shall be affixed over the mouths of bottles of distilled spirits, and no label shall obscure any government stamp or be obscured thereby, or obscure any markings or information required to be blown in the bottle by regulations of the Secretary of the Treasury.

(e) *Labels firmly affixed.*—All labels shall be affixed to bottles of distilled spirits in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels.*—Labels (other than the label to be known for the purposes of these regulations as the government label) may contain information other than the mandatory label information required by this article, provided such information complies with the requirements of this article, and does not conflict with, nor in any manner qualify, statements required by any regulations promulgated under the Act.

(g) *Representations as to materials.*—If any representation (other than representations or information required by this article) is made as to the presence, excellence, or other characteristic of any ingredient in any distilled spirits, or used in the production thereof, the label containing such representation shall state in print, type, or script, substantially as conspicuous as such representation, the name and amount in percent by volume of each such ingredient, except that percentages of whiskey, where stated, shall be stated as provided in Section 39: *Provided*, That no statement shall appear on any label with reference to the use of selected or choice grain, fruit, herbs, or other materials in the distilled spirits, or in the production thereof, unless such materials are of a higher grade than that customarily used in the industry, and then only if the Administrator has previously found, on the basis of evidence submitted to him, that such materials are of such higher grade. If only a portion of the materials used is of such higher grade, then the percentage thereof that is of such higher grade shall be stated in direct conjunction with such statement, in print, type, or script, substantially as conspicuous as that used in connection with such statement.

(h) Upon request of the Administrator, there shall be submitted to him a full and accurate statement of the contents of the bottles to which labels are to be or have been affixed.

SEC. 41. *Prohibited practices.*—(a) *Statements on labels.*—Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain—

(1) Any statement that is false or untrue in any particular or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression. Examples of such prohibited statements are:

Reproductions of medals or facsimiles of awards, when no medals or awards have been given for the particular product.

The statement that the product is "100% straight whiskeys", when in fact the product is less than 100 proof.

The statement that "Fine Flavored, Genuine Bourbon Whiskey is Made Only in Kentucky."

Domestic products containing the statement "Furnished to His Majesty, the King of -----."

"Due to our method of storage, this product ages in half the time."

"This whiskey is two months old. Due to our special aging process, however, it has the taste and characteristics of a much older whiskey."

"This whiskey is four months old. Due to our special manufacturing processes, this whiskey has all the characteristics of a one year old whiskey."

"Distilled from a scientifically controlled fermentation under laboratory control."

- (2) Any statement that is disparaging of a competitor's products. Examples of such prohibited statements are:

"Contains no neutral spirits or alcohol."

"Matured naturally—not heat treated."

"Not a compound, but a delicious distilled dry gin."

"Should not be confused with imitations that are made from neutral spirits."

"Contains no headaches."

- (3) Any statement, design, device, or representation which is obscene or indecent.

- (4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Administrator finds to be likely to mislead the consumer. Examples of such statements are:

"From 20 to 30 scientific determinations are required for each bottle tested."

"Analyzed by State laboratories and found to be pure and free from deleterious ingredients."

"Chemical analysis shows this whiskey to contain the flavoring, aroma, and other characteristics of four year old whiskey", when in fact such whiskey is less than four years old.

"Before bottling it is subjected to the most rigid tests for its taste, bouquet, and aroma, by our technical staff", signed by -----, B. Ch. E.

The statement that "The ----- Laboratories, recognized expert authority, tests and judges ----- products."

The statement "Tasted and Approved", signed by The ----- Research Institute.

The statement "Tasted and Tested to Assure the Highest Quality Flavoring and Freedom from Deleterious Ingredients."

- (5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Administrator finds to be likely to mislead the consumer. Nothing herein shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."

-----,"
(Blank to be filled in with the name of the permittee making guaranty.)

Examples of such statements are:

"Guaranteed to consumer by -----."

"Warranted to be the best product in its price range."

"Certified to be pure and free from deleterious matter."

"Guaranteed to be ten years old."

"Guaranteed to be distilled in the State of -----"

"Attested to be made by modern, scientific manufacturing processes."

- (6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this subsection shall not apply to the use of the name of any person

engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Simulation of Government stamps, etc.—*

(1) No label shall be of such design as to resemble or simulate a stamp of the United States Government or any State or foreign Government. No label, other than stamps authorized or required by this or any other Government, shall state or indicate that the distilled spirits contained in the labeled bottle are distilled, blended, made, bottled, or sold under, or in accordance with, any municipal, State, or Federal authorization, law, or regulations, unless such statement is required or specifically authorized by Federal, State, or municipal law or regulations, or is required or specifically authorized by the laws or regulations of a foreign country. If the municipal, State, or Federal government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto.

(2) If imported distilled spirits are labeled Scotch whiskey, blended Scotch whiskey, Irish whiskey, blended Irish whiskey, Canadian whiskey, blended Canadian whiskey, rum, brandy, or Cognac, or are labeled as whiskey of an American type, and such distilled spirits are covered by a certificate of origin or of age issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statement relating thereto. The reference to such certificate or certification shall, in the case of Cognac, be substantially in the following form: "This product accompanied at the time of importation by an 'Acquit Regional Jaune d'Or' issued by the French Government, indicating that this grape brandy was distilled in the Cognac Region of France"; and in the case of the other distilled spirits, substantially in the following form: "This product accompanied at time of importation by a certificate issued by the

government (name of government) indicating that the product is _____ (class and type as required to be stated on the label), and (if label claims age) that none of the distilled spirits are of an age less than stated on this label."

(8)* *Domestic "Bottled in Bond" Spirits.*—The words "Bond", "Bonded", "Bottled in Bond", "Aged in Bond", or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of domestic distilled spirits unless such distilled spirits were in fact bottled in bond under the Bottling in Bond Act of the United States.

(4) *Imported "Bottled in Bond" Spirits.*—The words "Bond", "Bonded", "Bottled in Bond", "Aged in Bond", or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless such distilled spirits, as to proof and age, and in all other respects, meet the requirements applicable to distilled spirits bottled, for domestic consumption, under the Bottling in Bond Act of the United States; and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or specifically authorize such distilled spirits to be so labeled. All spirits labeled as "Bonded", "Bottled in Bond", or "Aged in Bond" pursuant to the provisions of this paragraph shall bear in direct conjunction with such statement and in script, type or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

(c) *Use of word "pure."*—The word "pure" shall not be stated in any manner on any labels, except as part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled.

(d) *Use of "double distilled" or similar terms.*—No gin or other distilled spirits shall be labeled as "double distilled" or "triple distilled", or any similar term.

(e) *Statements, seals, flags, coats of arms, crests, and other insignia.*—Statements, seals, flags, coats of arms, crests, or other insignia, or graphic or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, the government,

organization, family, or individual with whom such seal, flag, coat of arms, crest, or insignia is associated, are prohibited on any label of distilled spirits.

(f) *Curative and therapeutic effects.*—Labels shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(g) *Individual coverings and cartons.*—Individual coverings, cartons, or other containers of bottled distilled spirits, or any written, printed, graphic, or other matter accompanying the bottle shall not contain any statement or any graphic, pictorial, or emblematic representation or other matter which is prohibited from appearing on any label or bottle of distilled spirits.

ARTICLE IV. REQUIREMENTS FOR WITHDRAWAL FROM CUSTOMS

CUSTODY OF BOTTLED IMPORTED DISTILLED SPIRITS

SEC. 45. *Label approval and release.*—(a) On or after August 15, 1936,¹ bottled distilled spirits shall not be released from customs custody for consumption, except pursuant to procedure and form prescribed by this Article.

(b) No bottled distilled spirits shall be released from customs custody unless there shall have been deposited with the appropriate customs officer at the port of entry an "Affidavit for Release of Distilled Spirits" (Form L. 3), which document shall be properly filled out and sworn to by the importer or transferee in bond, covering the particular brand or lot of distilled spirits sought to be released and which document shall be accompanied by the original or a photostatic copy firmly attached thereto of a "Certificate of Label Approval and Release for Imported Distilled Spirits" (Form L. 2). Such certificate shall be issued by the Administrator upon application made on the form designated "Application for Approval of Labels for Distilled Spirits Imported in Bottles" (Form L. 1), properly filled out and certified to by the importer or transferee in bond.

(c) *Release.*—If the "Affidavit for Release of Distilled Spirits" (Form L. 3) is accompanied by the original or a photostatic copy of the "Certificate of Label Approval and Release for Imported Distilled Spirits" (Form L. 2) the certificate of which bears the signature of the officer designated by the Administrator, then the brand or lot of bottled distilled spirits bearing labels identical with those shown on the original or a photostatic copy may be released from customs custody.

¹ As amended Feb. 20, 1936. Prior to the amendment and as originally promulgated, the date "August 15, 1936" read "March 1, 1936."

(d) *Relabeling*.—Distilled spirits in customs custody which are not labeled in conformity with certificates of label approval issued by the Administrator must be relabeled prior to release, under the supervision and direction of the Customs officers of the port at which such distilled spirits are located.

SEC. 46. *Certificates of origin and age*.—

(a) Scotch, Irish, and Canadian whiskeys, in bottles, whether blended or unblended, imported on or after August 15, 1936,¹ shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the British, Irish, or Canadian Governments, certifying (1) that the particular distilled spirits are Scotch, Irish, or Canadian whiskey, as the case may be, (2) that the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of the whiskey for home consumption, and (3) that the product conforms to the requirements of the Immature Spirits Act of such foreign government for spirits intended for home consumption.

(b) If the label of any Scotch, Irish, or Canadian whiskey, whether blended or unblended, imported in bottles on or after August 15, 1936,¹ contains any statement of age for Scotch or Irish whiskey in excess of three years, or Canadian whiskey in excess of two years, the whiskey shall not be released from customs custody unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying that none of the distilled spirits in the bottle are of an age less than that stated on the label. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers.

(c) If the label of any rum, brandy, or cognac, imported in bottles on or after August 15, 1936,¹ contains any statement of age, the rum, brandy, or cognac shall not be released from customs custody unless accompanied by a certificate issued by a duly authorized official of the Government of the foreign country in which the rum, brandy, or cognac was produced, certifying that none of the distilled spirits in the product are of an age less than that stated on the label. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers. Cognac in bottles, imported on or after August 15, 1936,¹ shall not be released from customs custody unless the invoice is accompanied by a certificate issued by a duly authorized official of the appropriate foreign government, certifying that the

¹ As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, the date "August 15, 1936" read "March 1, 1936."

product is grape brandy distilled in the Cognac Region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(d) American type whiskeys imported on or after August 15, 1936,¹ shall not be released from customs custody in bottles unless there is presented at the time of entry or at the time of request for release, a certificate issued by a duly authorized official of the appropriate foreign government certifying:

In case of straight whiskey, (1) the class and type, (such as straight whiskey, straight rye whiskey, straight bourbon whiskey, etc.), thereof, (2) the American proof at which distilled, (3) that no neutral spirits or other whiskey has been added as a part thereof or included therein, whether or not for the purpose of replacing outage, and (4) the age of the whiskey;

In case of distinctive types of whiskey, (1) the class and type (such as rye whiskey, bourbon whiskey, etc.), (2) the American proof at which distilled, (3) that no neutral spirits has been added as a part thereof or included therein, whether or not for the purpose of replacing outage, and (4) the age of the whiskey;

In case of blended whiskey, (1) the class and type (such as blended whiskey, blended rye whiskey, blended bourbon whiskey, etc.), (2) the percentage of straight whiskey, or any distinctive type thereof, used in the blend, (3) the American proof at which the straight whiskey was distilled, (4) the percentage of other whiskey, if any, in the blend, (5) the percentage of neutral spirits, if any, in the blend, and the name of the commodity from which distilled, and (6) the age of the straight whiskey and the age of the other whiskey, if any, in the blend.

The age certified shall be the period during which, after distillation and before bottling, the whiskey has been kept in charred oak containers.

ARTICLE V. REQUIREMENTS FOR APPROVAL OF LABELS OF DOMESTICALLY BOTTLED DISTILLED SPIRITS

SEC. 50. *Certificates of label approval.*—(a) No person shall bottle distilled spirits, other than distilled spirits in customs custody, or remove such spirits from his bottling plant unless upon application to the Administrator he has obtained, and has in his possession, a "Certificate of Approval of Labels of Domestically Bottled Distilled

¹As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, the date "August 15, 1936" read "March 1, 1936."

Spirits" (Form L. 5), covering such distilled spirits. Such certificate of label approval shall be issued by the Administrator upon application made on the form designated "Application for Approval of Labels of Domestically Bottled Distilled Spirits" (Form L. 4), properly filled out and certified to by the permittee.

(b) Any bottler of distilled spirits shall be exempt from the requirements of this Article if upon application he shows to the satisfaction of the Administrator that the distilled spirits to be bottled by him are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce. A "Certificate of Exemption from Label Approval for Distilled Spirits" (Form L. 7) shall be issued by the Administrator upon application made on the form designated "Application for Exemption from Distilled Spirits Label Approval" (Form L. 6), properly filled out and certified to by the permittee.

SEC. 51. *Certificates of age and origin.*—(a) Scotch, Irish, and Canadian whiskeys, whether blended or unblended, imported in bulk on or after August 15, 1936,¹ and bottled in the United States, shall not be labeled as Scotch, Irish, or Canadian whiskeys respectively, unless the bottler possesses a certificate of origin issued by a duly authorized official of the British, Irish, or Canadian governments, certifying (1) that the particular distilled spirits are Scotch, Irish, or Canadian whiskey, as the case may be, (2) that the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of the whiskey for home consumption, and (3) that the product conforms to the requirements of the Immature Spirits Act of such foreign government for spirits intended for home consumption.

(b) If any Scotch, Irish, or Canadian whiskey, whether blended or unblended, is imported in bulk on or after August 15, 1936,¹ and bottled in the United States, no statement shall appear on the label thereof representing the age of such Scotch or Irish whiskey to be in excess of three years, or Canadian whiskey in excess of two years, unless the permittee authorized to bottle such distilled spirits possesses a certificate for such distilled spirits issued by a duly authorized official of the appropriate foreign government certifying as to age of such whiskey. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers.

(c) If any rum or brandy is imported in bulk on or after August 15, 1936,¹ and bottled in the United States, no statement of age shall appear on the labels of such rum or brandy, unless the permittee authorized to bottle such distilled spirits possesses a certificate issued

¹ As amended Feb. 20, 1936. Prior to the amendment and as originally promulgated, the date "August 15, 1936" read "March 1, 1936."

by a duly authorized official of the government of the foreign country in which the rum or brandy was produced, certifying as to the age of such rum or brandy. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers. Brandy imported in bulk on or after August 15, 1936,¹ and bottled in the United States, shall not be labeled as "Cognac" unless the permittee authorized to bottle such distilled spirits possesses a certificate issued by a duly authorized official of the appropriate foreign government, certifying that the product is grape brandy distilled in the Cognac Region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(d) Distilled spirits imported in bulk on or after August 15, 1936,¹ and bottled in the United States with or without taxable rectification, shall not be labeled as any type of American whiskey, unless the permittee authorized to bottle such distilled spirits possesses a certificate for such whiskey issued by a duly authorized official of the appropriate foreign government certifying:

In case of straight whiskey: (1) the class and type (such as straight whiskey, straight rye whiskey, straight bourbon whiskey, etc.) thereof; (2) the American proof at which distilled; (3) that no neutral spirits or other whiskey has been added as a part thereof or included therein, whether or not for the purpose of replacing outage; and (4) the age of the whiskey (the period during which the whiskey has been kept in charred oak containers);

In case of distinctive types of whiskey: (1) the class and type (such as rye whiskey, bourbon whiskey, etc.); (2) the American proof at which distilled; (3) that no neutral spirits has been added as a part thereof or included therein, whether or not for the purpose of replacing outage; and (4) the age of the whiskey (the period during which the whiskey has been kept in charred oak containers);

In case of blended whiskey: (1) the class and type (such as blended whiskey, blended rye whiskey, blended bourbon whiskey, etc.); (2) the percentage of straight whiskey, or any distinctive type thereof, used in the blend; (3) the American proof at which the straight whiskey was distilled; (4) the percentage of other whiskey, if any, in the blend; (5) the percentage of neutral spirits, if any, in the blend, and the name of the commodity from which distilled; and (6) the age of the straight whiskey and the age of the other whiskey, if any, in

¹ As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, the day "August 15, 1936" read "March 1, 1936."

the blend (the period during which the whiskeys have been kept in charred oak containers);

and unless the labels are in all particulars consistent with the facts stated in the certificate.

SEC. 52. *Exhibiting certificates to Government officials.*—Any bottler holding an original or duplicate original of a certificate of label approval or a certificate of exemption, shall, upon demand, exhibit such certificate to a duly authorized representative of the United States Government.

SEC. 53. *Photoprints.*—Photoprints or other reproductions of certificates of label approval or certificates of exemption are not acceptable, for the purposes of this article, as substitutes for an original or duplicate original of a certificate of label approval, or a certificate of exemption. The Administrator will, upon the request of the bottler, issue duplicate originals of certificates of label approval or certificates of exemption if distilled spirits under the same brand are bottled at more than one plant by the same permittee, and if the necessity for the duplicate original is shown and there is listed with the Administrator the name and address of the additional bottling plant where the particular label is to be used.

ARTICLE VI.—ADVERTISING OF DISTILLED SPIRITS

SEC. 60. *Application of this article.*—No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, of distilled spirits, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of distilled spirits if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with this article: *Provided*, That this article shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising, and *Provided further*, That this article shall not apply to the publisher of any newspaper, periodical or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate.

SEC. 61. *Definitions.*—As used in this article—

The term "advertisement" includes any advertisement of distilled spirits through the medium of radio broadcast; or of newspapers, periodicals or other publications; or of any sign or outdoor adver-

tisement; or of any other printed or graphic matter, including trade booklets, menus, and wine cards—if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail; except that such term shall not include—

(1) Any label affixed to any bottle of distilled spirits; or any individual covering, carton, or other container of the bottle, or any written, printed, graphic, or other matter accompanying the bottle, which constitutes a part of the labeling under Article III of these regulations.

(2) Any editorial or other reading matter in any periodical or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee.

SEC. 62. Mandatory statements.—(a) *Responsible advertiser.*—The advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Glass and type.*—The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) *Alcoholic content.*—

(1) The alcoholic content by proof shall be stated for distilled spirits except as otherwise provided in paragraph (2) of this subsection.

(2) The alcoholic content in percentage by volume or by proof shall be stated for cordials and liqueurs, and gin fizzes, cocktails, highballs, bitters, and such other specialties as may be specified by the Administrator from time to time.

(d) *Percentage of neutral spirits and name of commodity.*—

(1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: “-----% neutral spirits distilled from grain”; or “-----% neutral spirits distilled from cane products”; or “-----% neutral spirits distilled from fruit”; or “-----% grain (cane products), (fruit), neutral spirits.”

- (2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "Distilled from grain", or "Distilled from cane products", or "Distilled from fruit."

SEC. 63. *Lettering.*—Statements required under this article to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

SEC. 64. *Prohibited statements.*—(a) An advertisement of distilled spirits shall not contain—

- (1) Any statement that is false or misleading in any material particular.
- (2) Any statement that is disparaging of a competitor's products.
- (3) Any statement, design, device, or representation which is obscene or indecent.
- (4) Any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the Administrator finds to be likely to mislead the consumer.
- (5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Administrator finds to be likely to mislead the consumer. Nothing herein shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."

(Blank to be filled in with name of the permittee making guaranty.)

- (6) Any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, State or Federal authorization, law, or regulation; and if a municipal, State or Federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.
- (7) The words "Bond", "Bonded", "Bottled in Bond", "Aged in Bond", or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant

to Article III of these regulations, upon the labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are required to appear upon the label.

(8) The word "pure" except as part of the bona fide name of a permittee or a retailer for whom the distilled spirits are bottled.

(9) The terms "double distilled", "triple distilled", or any similar terms.

(b) *Statements inconsistent with labeling.*—The advertisement shall not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling thereof.¹ This requirement shall become effective August 15, 1936.¹

(c) *Statements of age.*—The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of Article III of these regulations.

(d) *Curative and therapeutic effects.*—The advertisement shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(e) *Place of origin.*—The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) *Confusion of brands.*—Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of this article or are in any respect untrue.

(g) *Statements, seals, flags, coats of arms, crests, and other insignia.*—Statements, seals, flags, coats of arms, crests, and other insignia, or graphic, pictorial or emblematic representations thereof,

¹ As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, this sentence did not appear in these regulations.

likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for or under the supervision of, or in accordance with the specifications of, the government, organization, family, or individual with whom such seal, flag, coat of arms, crest or other insignia is associated, are prohibited in any advertisement.

ARTICLE VII. STANDARDS OF FILL FOR BOTTLED DISTILLED SPIRITS

SEC. 70. *Application of this article.*—No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled in conformity with this Article. Distilled spirits domestically bottled prior to January 1, 1935, and imported distilled spirits entered in customs bond in bottles prior to March 1, 1935, shall be regarded as being in conformity with this Article (1) if the bottle, or the label on the bottle, contains a conspicuous statement of the net contents thereof, and (2) if the actual capacity of the bottle is not substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

SEC. 71. *Misbranding.*—(a) Distilled spirits shall be deemed to be misbranded—

- (1) If the bottle is not a standard liquor bottle as prescribed by Section 72 for such distilled spirits.
- (2) If the amount of the distilled spirits contained in the bottle does not conform to one of the standards of fill in effect therefor under Section 73.
- (3) If the bottle is in an individual carton or other container, and the carton or other container is so made or formed as to mislead purchasers as to the size of the bottle.

SEC. 72. *Standard liquor bottles.*—(a) *General.*—A standard liquor bottle shall be one so made, formed and filled as not to mislead the purchaser.

(b) *Size.*—A liquor bottle shall be held to be so filled as to mislead the purchaser if the bottle holds distilled spirits in an amount other than one of the standards of fill in effect therefor under Section 73.

(c) *Headspace.*—A liquor bottle of a capacity of one-half pint or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of eight per centum of the total capacity of the bottle after closure.

(d) *Design.*—A liquor bottle shall be held (irrespective of the correctness of the net contents specified on the label) to be so made and formed as to mislead the purchaser, if its actual capacity is substan-

tially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

SEC. 73. *Standards of fill.*—(a) The standards of fill for distilled spirits in liquor bottles shall be the following, subject to the tolerances hereinafter allowed:

- (1) For all distilled spirits, whether domestically manufactured, domestically bottled, or imported:

| | | | |
|-----------------------|----------------------|---------------------|----------------------|
| 1 gallon. | 1 quart. | 1 pint. | $\frac{1}{8}$ pint. |
| $\frac{1}{2}$ gallon. | $\frac{1}{2}$ quart. | $\frac{1}{2}$ pint. | $\frac{1}{16}$ pint. |

- (2) In addition, for brandy, whether domestically manufactured, domestically bottled, or imported:

$\frac{1}{16}$ pint.

- (3) In addition, for Scotch and Irish whiskey and Scotch and Irish type whiskey; and for brandy and rum:

$\frac{1}{8}$ pint.

- (b) The following tolerances shall be allowed:

- (1) Discrepancies due exclusively to errors in measuring which occur in filling conducted in compliance with good commercial practice.

- (2) Discrepancies due exclusively to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles so as to be of uniform capacity: *Provided*, That no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

- (3) Discrepancies in measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

SEC. 74. *Vintage spirits.*—This Article shall not apply to—

- (1) Distilled spirits imported as vintage spirits under permit issued by a District Supervisor of the Alcohol Tax Unit of the Bureau of Internal Revenue pursuant to Regulations 13 (Liquor Bottle Regulations) issued by the Secretary of the Treasury.

- (2) Cordials and liqueurs, and cocktails, highballs, gin fizzes, biters, and such other specialties as are specified from time to time by the Administrator.

ARTICLE VIII. GENERAL PROVISIONS

SEC. 80. *Exports.*—These regulations shall not apply to distilled spirits exported in bond.

SEC. 81. *Applicability of other regulations.*—Nothing contained in these regulations shall be construed as, in any manner, relieving any person from conforming with the requirements of the regulations of the Secretary of the Treasury issued pursuant to provisions of joint resolution approved June 18, 1934, entitled "Joint Resolution to Protect the Revenue by Regulation of the Traffic in Containers of Distilled Spirits."

SEC. 82. *Effective dates.*—Articles I, II, and VI of these regulations, except as otherwise provided, are effective on and after May 1, 1936. All other articles of these regulations, except as otherwise provided, are effective on and after August 15, 1936.¹

(Signed) JOSEPHINE ROCHE,
Acting Administrator,
Federal Alcohol Administration.

Approved Jan. 18, 1936.

(Signed) H. MORGENTHAU, JR.
Secretary of the Treasury.

¹As amended Feb. 29, 1936. Prior to the amendment and as originally promulgated, this section read as follows: "Except as otherwise provided herein, these regulations are effective on and after the first day of March 1936."

APPENDIX A

PERTINENT SECTION OF FEDERAL ALCOHOL ADMINISTRATION ACT RELATING TO LABELING OF DISTILLED SPIRITS (SEC. 5 (e), FEDERAL ALCOHOL ADMINISTRATION ACT)

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

* SEC. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate: * * *

(e) *Labeling.*—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided,*

That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further*, That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice),¹ bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection; or * * *

¹ As amended by S. J. Res. 217, 74th Cong., 2d sess. Prior to the amendment and as originally enacted, the matter in parentheses read: "(but not later than March 1, 1936, and only after thirty days' public notice)."

The Administrator shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section.

APPENDIX B

PERTINENT SECTION OF FEDERAL ALCOHOL ADMINISTRATION ACT RELATING TO ADVERTISING OF DISTILLED SPIRITS (SEC. 5 (f), FEDERAL ALCOHOL ADMINISTRATION ACT)

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

SEC. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate: * * *

(f) *Advertising.*—To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate: * * *

The Administrator shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section.

APPENDIX C

PERTINENT SECTIONS OF FEDERAL ALCOHOL ADMINISTRATION ACT RELATING TO PENALTIES FOR VIOLATIONS INVOLVING THE LABELING AND ADVERTISING OF DISTILLED SPIRITS

1. Civil penalties, \$1,000 (sec. 7, Federal Alcohol Administration Act):

PENALTIES

SEC. 7. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, of the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States to prevent and restrain violations of any of the provisions of this Act. Any person violating any of the provisions of sections 3 or 5 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than \$1,000 for each offense. Subject to the approval of the Attorney General, the Administrator is authorized, with respect to any violation of this Act, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of \$500 for each offense, to be collected by the Administrator and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

2. Suspension or revocation of permit (sec. 4 (d) and 4 (e), Federal Alcohol Administration Act):

PERMITS

SEC. 4. * * * (d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

(e) A basic permit shall by order of the Administrator, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Administrator deems appropriate, if the Administrator finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Administrator finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the Administrator finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

APPENDIX D

FORM OF, AND INSTRUCTIONS RELATING TO, "GOVERNMENT" LABEL¹

Pursuant to section 32 of Regulations 5, Relating to the Labeling and Advertising of Distilled Spirits, the following form of "Government" label is hereby prescribed for all classes and types of distilled spirits.

CLASS AND TYPE

- (1) Alcoholic content.
- (2) Net contents.
- (3) Percentage of neutral spirits and name of commodity from which distilled.
- (4) Age statement.
- (5) Artificial or excessive coloring or flavoring.
- (6) State of distillation.

If all of the mandatory information required by section 32 (c) of Regulations 5 appears on the brand label, in the manner and form prescribed by the regulations, no separate "Government" label need be used. The "Government" label, however, if used, shall be prepared in the manner and form above prescribed. If any of the prescribed statements, as itemized above, are not applicable to the particular product to which the label is to be affixed (such as "Artificial or excessive coloring or flavoring"), or if any such statement is not authorized by the Regulations to appear upon the label of any particular product, all reference thereto shall be omitted. In the event that any such statement is omitted, however, all other statements, applicable to the particular product, shall appear in the form above prescribed, and in the order enumerated.

The words "Government label" or "Federal Alcohol Administration label" or similar words shall not be printed or otherwise stated on any label for distilled spirits. The label herein prescribed shall contain only the mandatory information above enumerated, and no other printed or graphic matter shall appear thereon. However, if the bottler desires to use a back label containing printed or graphic matter which does not conflict with the Regulations, the mandatory label information may be stated on such label, if it is stated in the manner and form herein prescribed and is separated by a heavy line or a wide space from all other matter appearing on such label.

¹ Issued Feb. 28, 1936.

PART II

MANNER OF STATING MANDATORY INFORMATION

The mandatory information required to appear upon the "Government" label shall be stated in the following manner:

(1) *Alcoholic content.*—

Except in the case of cordials and liqueurs, alcoholic content shall be stated in degrees of proof, as follows: "_____ proof."

In the case of cordials and liqueurs, alcoholic content may be stated by degrees of proof or percentage of volume, as follows: "_____ proof" or "_____ % Alcohol by Volume."

(2) *Net contents.*—

The net contents, unless blown in the bottle, shall be stated as follows:

If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

If less than a pint, the net contents shall be stated in fractions of a pint; as for example " $\frac{1}{2}$ pint."

If more than a pint, but less than a quart, the net contents shall be stated in fractions of a quart, as for example " $\frac{1}{2}$ quart."

If more than a quart, but less than a gallon, the net contents shall be stated in fractions of a gallon, as for example " $\frac{1}{2}$ gallon."

All fractions shall be expressed in their lowest denomination. If blown in the bottle, net contents need not be stated.

(3) *Percentage of neutral spirits and name of commodity from which distilled.*—

In the case of neutral spirits, only the name of the commodity from which distilled need be stated. Such statement shall be as follows:

| | |
|------------------------|--------------------------------------|
| Distilled from (grain) | or (grain) neutral spirits (alcohol) |
| (cane products) | (cane products) |
| (fruit) | (fruit) |

In the case of gin produced by a process of continuous distillation, only the name of the commodity from which distilled need be stated. Such statement shall be as follows:

| |
|------------------------|
| Distilled from (grain) |
| (cane products) |
| (fruit) |

In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits are used therein, the percentage of such neutral spirits and the name of the commodity from which distilled shall be stated as follows:

----- % neutral spirits distilled from (grain) (cane products) (fruit) or ----- % (grain) (cane products) (fruit) neutral spirits.

In the case of blended whiskey or spirit whiskey, as defined in the standards of identity, Regulations 5, the above statement shall appear in immediate conjunction with the required age statement.

(4) *Age statements.*—

(a) In the case of neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, bitters, and specialties, age statements are prohibited.

(b) In the case of rum, brandy, cognac, Scotch whiskey, Irish whiskey, Canadian whiskey, and American bottled in bond whiskey, age statements are optional. When such statements are used, they shall appear in the precise form prescribed in section 39 of Regulations 5.

(c) In the case of all classes and types of domestic whiskey, except bottled in bond whiskey, and in the case of all American type whiskey produced abroad, statements of age and percentage are required. In such cases the statements of age and percentage shall be in the precise form prescribed by section 39 of Regulations 5.

(d) Regulations 5 define the term "age" to mean "the period during which, after distillation and before bottling, distilled spirits have been kept in oak containers, charred if for a whiskey of American type other than corn whiskey, straight corn whiskey, blended corn whiskey, or a blend of straight corn whiskeys. In the case of American type whiskeys produced on or after July 1, 1936, other than corn whiskey, straight corn whiskey, blended corn whiskey, and blends of straight corn whiskey, "age" means the period during which the whiskey has been kept in charred new oak containers."

(5) *Artificial or excessive coloring or flavoring.*—

(a) The presence of bending oil in any type of whiskey shall be stated as follows: "Contains bending oil."

(b) In the case of all distilled spirits containing some, but not more than $2\frac{1}{2}$ percent of synthetic or imitation coloring material, the presence thereof must be stated as follows: "Artificially colored"; *Provided*, That in the case of any type of whiskey (not including straight whiskey), brandy, or rum, the above statement is not required by reason of the use of caramel for coloring purposes.

(c) In the case of distilled spirits other than cordials, liqueurs, gin, gin fizzes, highballs and bitters, if the aggregate amount of coloring, blending, smoothing, or flavoring materials present is in excess of $2\frac{1}{2}$ percent by volume, the name and amount in percentage by volume of each of such materials shall be stated as follows:

"Contains -----% ----- (coloring) material."
 (blending)
 (smoothing)
 (flavoring)

(6) *State of distillation.*—

In the case of domestic whiskey and straight whiskey, if the product is not distilled in the State given in the address on the brand label, the State of distillation shall appear as follows: "Distilled in ----- (the blank shall be filled in with the name of the State in which the whiskey is distilled)."

¹Amended July 8, 1936.

PART III

SAMPLE GOVERNMENT LABEL FORMS

For the information and guidance of all concerned, the following are sample forms of "Government" labels for the various classes and types of distilled spirits as defined in Regulations 5:

(1) *Alcohol (neutral spirits).*—

(Class 1, Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable.

Sample form

| |
|----------------------|
| ALCOHOL |
| 193 proof |
| 1 gallon |
| Distilled from grain |

(2) *Whiskey, rye whiskey, bourbon whiskey, corn whiskey, wheat whiskey, malt whiskey, rye malt whiskey.*—

(Class 2 (a), Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 4 of the above-prescribed "Government" label form are required to be stated. Statements 5 and 6 must appear if applicable.

Sample form

| |
|--------------------------------------|
| RYE WHISKEY |
| 93 proof |
| 1 pint |
| This whiskey is 9 months old |
| Contains beading oil |
| Contains 3% sherry blending material |
| Distilled in Maryland |

REGULATIONS NO. 5

(3) *Straight whiskey, straight rye whiskey, straight bourbon whiskey, straight corn whiskey, straight wheat whiskey, straight malt whiskey, straight rye malt whiskey.*—

(Class 2 (b), (c), (d), (e), and (f), Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 4 of the above-prescribed "Government" label form are required to be stated. Statement 6 must appear if applicable.

Sample form

| |
|--|
| <p style="text-align: center;">STRAIGHT BOURBON WHISKEY</p> <p style="text-align: center;">100 proof</p> <p style="text-align: center;">1 pint</p> <p style="text-align: center;">This whiskey is 2 years and 6 months old</p> <p style="text-align: center;">Distilled in Pennsylvania</p> |
|--|

(4) *Blended whiskey (whiskey—a blend), blended rye whiskey (rye whiskey—a blend), blended bourbon whiskey (bourbon whiskey—a blend), blended corn whiskey (corn whiskey—a blend), blended wheat whiskey (wheat whiskey—a blend), blended malt whiskey (malt whiskey—a blend) or blended rye malt whiskey (rye malt whiskey—a blend).*—

(Class 2 (g) and (h), Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 3 of the above-prescribed "Government" label form are required to be stated. Statements 4 and 5 must appear if applicable.

Sample form

| |
|--|
| <p style="text-align: center;">BLENDED RYE WHISKEY</p> <p style="text-align: center;">90 proof</p> <p style="text-align: center;">1 quart</p> <p style="text-align: center;">The straight whiskey in this product is 2 years old, 51% straight whiskey, 40% grain neutral spirits</p> <p style="text-align: center;">Contains beading oil</p> |
|--|

(5) A blend of straight whiskeys (blended straight whiskeys), a blend of straight rye whiskeys (blended straight rye whiskeys), a blend of straight bourbon whiskeys (blended straight bourbon whiskeys), a blend of straight corn whiskeys (blended straight corn whiskeys), a blend of straight wheat whiskeys (blended straight wheat whiskeys), a blend of straight malt whiskeys (blended straight malt whiskeys) and a blend of straight rye malt whiskeys (blended straight rye malt whiskeys).—

(Class 2 (1), Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 4 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable.

Sample form

BLENDED STRAIGHT CORN WHISKEYS

95 proof

4/5 quart

The straight whiskeys in this product
are 3 years or more old

Contains 3% sherry blending material

(6) *Spirit whiskey.*—

(Class 2 (j), Sec. 21, Art. II, Regulations 5)

Statements 1, 2, 3, and 4 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable.

Sample form

SPIRIT WHISKEY

80 proof

1 pint

The whiskey in this product is 4
months old; 10% whiskey, and 90%
cane products neutral spirits

Contains beading oil

(7) *Scotch whiskey, blended Scotch Whiskey (Scotch whiskey—a blend).—*

(Class 2 (k), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable. Statement 4 may, but need not, appear.

Sample form

| |
|--|
| <p>SCOTCH WHISKEY—A BLEND</p> <p>86.8 proof</p> <p>4/5 quart</p> <p>Contains 3½% brandy blending material</p> |
|--|

(8) *Irish whiskey, blended Irish whiskey (Irish whiskey—a blend).—*

(Class 2 (1), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable. Statement 4 may, but need not, appear.

Sample form

| |
|---|
| <p>BLENDED IRISH WHISKEY</p> <p>90 proof</p> <p>¾ quart</p> <p>This whiskey is 8 years old</p> <p>Contains beading oil</p> |
|---|

(9) *Canadian whiskey, blended Canadian whiskey (Canadian whiskey—a blend).*—

(Class 2 (m), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statements 3 and 5 must appear if applicable. Statement 4 may, but need not, appear.

Sample form

| |
|--|
| <p>BLENDED CANADIAN WHISKEY</p> <p>90 proof</p> <p>1 pint</p> <p>8% grain neutral spirits</p> |
|--|

(10) *Blended Scotch type whiskey (Scotch type whiskey—a blend), (American blended Scotch whiskey), (American Scotch whiskey—a blend).*—

(Class 2 (n), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 4 is required to be stated if any of the malt whiskey or other whiskey used is less than 3 years old. If all of the whiskeys in the product are over 3 years old, statement 4 may, but need not, appear. Statement 5 must appear if applicable.

Sample form

| |
|---|
| <p>BLENDED SCOTCH TYPE WHISKEY</p> <p>86.8 proof</p> <p>4/5 quart</p> <p>The malt whiskey in this product is 3 years old; 50% malt whiskey, 50% other whiskey 9 months old</p> |
|---|

(11) *Blended Irish type whiskey (Irish type whiskey—a blend), (American blended Irish whiskey), (American Irish whiskey—a blend).—*

(Class 2 (c), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 4 is required to be stated if any of the malt whiskey or other whiskey used is less than 3 years old. If all of the whiskeys in the product are over 3 years old, statement 4 may, but need not, appear. Statement 5 must appear if applicable.

Sample form

BLENDED IRISH TYPE WHISKEY

90 proof

4/5 quart

The malt whiskey in this product is
4 years old; 50% malt whiskey, 50%
other whiskey 10 months old

(12) *Distilled gin, compound gin.—*

NOTE.—This form to be used for "Dry gin," "London dry gin," "Holland gin," "Geneva gin," "Old Tom gin," "Tom gin," and "Buchu gin," further designated as "Distilled" or "Compound," as the case may be.

(Class 3, Sec. 21, Art. II, Regulations 5)

Statements 1, 2, and 3, of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable.

Sample form

DISTILLED DRY GIN

90 proof

1 pint

100% cane products neutral spirits

(13) *Brandy (Grape brandy), Peach brandy, Apricot brandy, Raisin brandy, Apple brandy (Applejack), Cherry brandy, Orange brandy,* -----

(other fruit)

brandy, Cognac (Cognac brandy), Dried Peach brandy, Dried Apricot brandy, Dried Apple brandy, Dried Cherry brandy, Dried Orange brandy, and Dried ----- brandy.—

(other fruit)

NOTE.—Other appropriate term may be used in place of word "Dried."

(Class 4, Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable. Statement 4 may, but need not, appear.

Sample form

GRAPE BRANDY

90 proof

1 pint

Artificially colored

(14) *Rum, New England rum, Puerto Rico rum, Cuba rum, Demarara rum, Barbados rum, St. Croix rum, St. Thomas rum, Virgin Islands rum, Jamaica rum, Martinique rum, Trinidad rum, Haiti rum, San Domingo rum.—*

(Class 5, Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable. Statement 4 may, but need not, appear.

Sample form

RUM

90 proof

1 pint

REGULATIONS NO. 5

(15) _____ { *Cordial* } , *Sloe gin*
 (Type designation) { *Liqueur* }

NOTE.—Name of cordial may be preceded by word "Dry" if added sugar and dextrose are less than 10% by weight in the finished product.

Words "Cordial" or "Liqueur" need not be stated to indicate the class of distilled spirits which in fact are cordials or liqueurs, unless the Administrator finds that without a designation of class, the type designation is one which does not clearly indicate to the consumer that the product is a cordial or liqueur.

(Class 6 (a), (b), and (d), Sec. 21, Art. II, Regulations 5)

Statements 1 and 2 of the above-prescribed "Government" label form are required to be stated. Statement 5 must appear if applicable.

Sample form

| |
|---|
| <p>BLACKBERRY CORDIAL</p> <p>80% alcohol by volume</p> <p>1 pint</p> <p>Artificially colored</p> |
|---|

PART IV

CERTIFICATES OF LABEL APPROVAL

Articles IV and V of Regulations 5 require that applications for "Certificates of label approval" be filed covering all labels affixed to domestically bottled distilled spirits, and distilled spirits imported in bottles. However, except as provided below, no applications for "Certificates of label approval" need be filed covering "Government" labels:

(1) All labels on distilled spirits imported in bottles, including "Government" labels, must be submitted for approval.

(2) All labels for domestically bottled highballs, cocktails, gin fizzes, specialty products, imitation products, and products covering which no standard of identity is prescribed in Regulations 5, including "Government" labels on such products, must be submitted for approval.

(3) If the "Government" label on domestically bottled distilled spirits is superimposed upon another label bearing other printed or graphic matter, such label must be submitted for approval.

W. S. ALEXANDER,
 Administrator, Federal Alcohol Administration.

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**TREASURY DEPARTMENT
FEDERAL ALCOHOL ADMINISTRATION**

REGULATIONS No. 3
RELATING TO
BULK SALES AND BOTTLING
OF DISTILLED SPIRITS

**UNDER THE PROVISIONS OF THE
FEDERAL ALCOHOL ADMINISTRATION ACT, APPROVED
AUGUST 29, 1935 (PUBLIC, No. 401, 74th CONGRESS)**

▼
DECEMBER 1935



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REGULATIONS NO. 3.—RELATING TO BULK SALES AND BOTTLING OF DISTILLED SPIRITS

SECTION 1. *Sales of distilled spirits in bulk.*—(a) It is unlawful for any person to sell, offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk, for nonindustrial use, except for export or to the classes of persons enumerated in section 2 hereof.

(b) It is unlawful for any person to import distilled spirits in bulk, for nonindustrial use, except for sale to or for use by the classes of persons enumerated in section 2 hereof.

(c) As used in these regulations the term "in bulk" means in containers having a capacity in excess of 1 wine gallon.

SEC. 2. *Acquiring or receiving distilled spirits in bulk.*—(a) Persons holding warehousing and bottling permits may, pursuant to such permits, acquire or receive in bulk, and warehouse and bottle, distilled spirits as follows:

(1) If the permittee is a distiller or other person operating an internal-revenue bonded warehouse, he may acquire or receive in bulk, and warehouse and bottle in his bonded premises domestic un-tax-paid distilled spirits, so far as permitted by the internal-revenue laws. He may also acquire or receive in bulk, and warehouse and bottle, in his tax-paid warehouse, tax-paid domestic and imported distilled spirits.

(2) If the permittee is a rectifier, he may acquire or receive in bulk, and warehouse and bottle, tax-paid domestic and imported distilled spirits.

(3) If the permittee operates a class 8 customs-bonded warehouse, he may acquire or receive in bulk, and warehouse and bottle, imported distilled spirits, so far as permitted by the customs laws.

(b) Persons holding permits as rectifiers of distilled spirits, or as producers and blenders of wine, may, pursuant to such permits, acquire, or receive distilled spirits in bulk for the following uses:

(1) A rectifier may acquire or receive in bulk tax-paid imported or domestic distilled spirits for use in rectifying and blending.

(2) A winemaker may acquire or receive in bulk alcohol or brandy for the fortification of wines.

(c) Any agency of the United States, or of any State or political subdivision thereof, may acquire or receive in bulk, and warehouse and bottle, imported and domestic distilled spirits in conformity with the internal-revenue laws.

SEC. 3. *Warehouse receipts.*—(a) By the terms of the Federal Alcohol Administration Act, all warehouse receipts for distilled spirits in bulk issued on and after August 29, 1935, must require that the warehouseman shall—

(1) Package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or

(2) Deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(b) Warehouse receipts for distilled spirits, in bulk, issued prior to August 29, 1935, may not be transferred unless they contain one or both of the conditions enumerated in paragraph (a) above, but any warehouse receipt for distilled spirits in bulk issued prior to August 29, 1935, which does not contain either of the above conditions, may be exchanged for a receipt conforming to the act.

(c) The provisions of the Federal Alcohol Administration Act, which forbid any person to sell, offer to sell, contract to sell or otherwise dispose of warehouse receipts for distilled spirits in bulk, do not apply to warehouse receipts for bottled distilled spirits.

SEC. 4. *Sales by permittees of distilled spirits for industrial use.*—Distillers, rectifiers, and other permittees engaged in the sale or other disposition of distilled spirits for nonindustrial use shall not sell or otherwise dispose of distilled spirits in bulk (other than alcohol) for industrial use, unless such distilled spirits are shipped or delivered directly to the industrial user thereof.

(Signed) FRANKLIN C. HOYT,
Administrator, Federal Alcohol Administration.

Approved December 20, 1935.

(Signed) H. MORGENTHAU, JR.
Secretary of the Treasury.

The transmission to the Circuit Court of Appeals of Plaintiff's original Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", will be requested.

EXHIBIT AK FOR PLAINTIFF.

Government of Puerto Rico
Department of Finance

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify:

That according to the records of this Department, there appears an importation of distilled spirits made by F. Carrera & Hno., of San Juan, Puerto Rico, on May 3, 1934, on which taxes were paid amounting to \$208-80, declared in invoice No. 31230. The labels affixed to the containers of said distilled spirits show the following:—

Ron Dominicano
Carta Blanca
Brugal & Ca.
Puerto Plata
Republic Dominicana
Medallas de Oro Brugal Medallas de Oro".

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the City of San Juan, Puerto Rico, on this the eighteenth day of January of the year nineteen hundred and thirty-eight.

R. SANCHO BONET

Treasurer of Puerto Rico.

[Internal Revenue Stamps for \$1-50 Cancelled.]

EXHIBIT AL FOR PLAINTIFF.

Government of Puerto Rico
Department of Finance

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify:

That according to the records of this Department, Compania Ron Brugal, S. A. has filed with this Department the labels described hereinbelow and appearing on the reversed side hereof, as being or having been used on the alcoholic beverages manufactured by said Compania Ron Brugal, S. A., in Puerto Rico;

"Ron Brugal—Red Label"

"Brugal—Brugal Rum Superior" (Gold Label and White Label)

"Ron Cabellito"

"Ron Trafico"

"Rum Brugal Superior"—Cuban Type"

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the city of San Juan, Puerto Rico, on this the eighteenth day of January of the year nineteen hundred thirty-eight.

R. SANCHO BONET

Treasurer of Puerto Rico

[Internal Revenue Stamps for \$1-50 cancelled]

EXHIBIT AM FOR PLAINTIFF.

Government of Puerto Rico

Department of Finance

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify;—

That according to the records of this Department, National Liquor Company, Inc., of Hato Rey, Rio Piedras, Puerto Rico, has filed with this Department the labels described hereinbelow and appearing on the reverse side hereof, as being or having been used on the alcoholic beverages manufactured by said National Liquor Company, Inc.:

"Daiquiri Coctelera Rum—Cordon De Oro—Golden Cord

Product of Puerto Rico Trade Mark Registered
 Comp. Ron Daiquiri—S. A."
 "Nacional—Aguardiente Seco Destilado"
 "Ron Aereoplano—Puerto Rican Rum"
 Ron Carta Oro Puerto Rico
 "Ron Nacional Superior—Puerto Rican Rum"
 "El Abuelo—Ron de Puerto Rico"
 "Ron Campeon De Puerto Rico"
 "Ron Rey—Distilled Puerto Rican Rum—The King of
 Rums—Gold Label".

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the city of San Juan, Puerto Rico, on this the eighteenth day of January of the year nineteen hundred thirty-eight.

R. SANCHO BONET

Treasurer of Puerto Rico.

[Internal Revenue Stamps for \$1-50 Cancelled.]

EXHIBIT AN FOR PLAINTIFF.

Department of Finance
 The People of Puerto Rico
 Bureau of Alcoholic Beverages and Narcotics

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify:—

That according to the records of this Department, the following persons and entities appear as licensed manufacturers of distilled spirits or alcoholic beverages, on or before February 1, 1936:

Distillers

Puerto Rico Distilling Co.
 Sucn. J. Serralles (now Destileria Serralles, Inc.)
 Brugal & Co. C. por A.

Arecibo
 Ponce
 San Juan

| | |
|------------------------------------|----------|
| West Indies Rum Distilleries, Inc. | Ponce |
| Rafael del Valle Pijem | Santurce |
| Roberto Castellon | Caguas |
| Jose del Rio | Morovis |
| Luis A. Girona | Caguas |

Rectifiers

| | |
|---|-------------|
| Sucn. J. Serralles (now Destileria Serralles, Inc.) | Ponce |
| I. Torruella & Co. | Ponce |
| Pedro R. Grau | Mayaguez |
| Primitivo Grau | Mayaguez |
| Manuel Marin & Co. (now Licoreria Marin, Inc.) | Mayaguez |
| The Gioconda, Inc. | San German |
| J. R. Nieves & Co. | Arroyo |
| Puerto Rico Distilling Co. | Arecibo |
| Barcelo & Co. | Arecibo |
| R. G. Lago & Co. | Arecibo |
| J. M. Portela & Co. | Arecibo |
| Roses & Co. | Arecibo |
| J. Gonzalez Clemente & Co. (now J. Gonzalez Clemente) | Mayaguez |
| L. Isern & Co. | Caguas |
| Vigo Isern & Co. | Caguas |
| Cia. Ron La Vida, Inc. | Santurce |
| Salvador Bow | Santurce |
| Vicente Tellado, Sucrs. | Santurce |
| R. Rios Alvarez | Santurce |
| Eduardo R. Gonzalez | San Juan |
| R. Vega e Hijos | San Juan |
| Sucs. de Jose Fernandez | San Juan |
| Nicolas Figuerola | Caguas |
| Francisco N. Selles | San Lorenzo |
| M. Davila & Co. | Santurce |
| Edmundo B. Fernandez | Bayamon |

| | |
|---|-------------|
| Mateo M. Pascual | Rio Piedras |
| National Liquor Co., Inc. | Rio Piedras |
| Brugal & Co., C. por A | San Juan |
| F. Arce Almiroty | Ponce |
| Licoreria Gatell | Santurce |
| Antonio Yumet | Ponce |
| Roberto Castellon | Caguas |
| West Indies Rum Distilleries, Inc. | Ponce |
| Monllor & Boscio, Sucs. S. en C. | Ponce |
| Ramon C. Julia (now Cia Licorera Julia) | Santurce |
| J. Moises Colon (Colon Hnos. & Co.) | Comerio |

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the city of San Juan, Puerto Rico, on this the eighteenth day of January of the year nineteen hundred thirty-eight.

R. SANCHO BONET,

Treasurer of Puerto Rico.

[Internal Revenue Stamps for \$1-50 Cancelled.]

EXHIBIT AO FOR PLAINTIFF.

Government of Puerto Rico
Department of Finance

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify:—

That according to the records of this Department, the following persons and entities appear as Licensed manufacturers of distilled spirits or alcoholic beverages, after February 1, 1936:—

Distillers

| | |
|----------------------------------|----------|
| Barcelo, Marques & Co., S. en C. | Camuy |
| Cia Ron Carioca Destileria, Inc. | Camuy |
| National Liquor Co., Inc. | Jayuya |
| Colon Hermanos & Cia | Comerio |
| Bacardi Corporation of America | Santurce |

Rectifiers

| | |
|-----------------------------------|----------|
| A. Vega Toro | Mayaguez |
| Julio Maldonado | Mayaguez |
| Cia. Ron Carioca Destileria, Inc. | San Juan |
| Compania Puertorriquena de Ron | Santurce |
| Ordonez Hermanos | Santurce |
| Ubides & Co. | Ponce |
| Bacardi Corporation of America | San Juan |

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the city of San Juan, Puerto Rico, on this the eighteenth day of January, of the year nineteen hundred and thirty-eight.

R. SANCHO BONET,

Treasurer of Puerto Rico.

[Internal Revenue Stamps for \$1-50 Cancelled.]

EXHIBIT AP FOR PLAINTIFF.

Government of Puerto Rico

Department of Finance

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do hereby certify:—

That according to the records of this Department, Compania Ron Carioca Destileria, Inc., of San Juan, Puerto Rico, was duly licensed by the Department of Finance to manufacture alcoholic beverages on December 18, 1936, and that said Compania Ron Carioca, Destileria, Inc. has filed with this Department the labels described hereinbelow and appearing on the reverse side hereof, as being or having been used on the alcoholic beverages manufactured in Puerto Rico,

"Rum Carioca—Planters Heavy Bodied"

"Rum Carioca—Carta Blanca"

"Rum Carioca—Gold Label"

In testimony whereof, and upon order of the District Court of the United States for the District of Puerto Rico, San Juan, Puerto Rico, I do hereby set my hand and the official seal of the Department of Finance, in the city of San Juan, Puerto Rico, on this the eighteenth day of January of the year nineteen hundred thirty-eight.

R. SANCHO BONET,

Treasurer of Puerto Rico.

[Internal Revenue Stamps for \$1-50 Cancelled.]

EXHIBIT AQ FOR PLAINTIFF.

Law Office Garcia Vidal

[Four five cents stamps cancelled.]

Lacret Baja 3 Phone Number 2059 Santiago Cuba

Manuel Garcia Vidal Esq.—Secretary of the Commercial and Industrial stock company domiciled in this City, known as "Compania Ron Bacardi, S. A."

Certify:—That at a meeting of the Board of Directors of this Company, held on February 25, 1923 at which were present seven of the eight directors who compose the said Board of Directors, Enrique Schueg y Chassin was unanimously elected Managing Director of this company, of which office he took possession; that it was further unanimously voted at said meeting to delegate the powers vested in the Board of Directors of this Company into said Enrique Schueg y Chassin, Managing Director among other; to exercise them together with another or separately that he has the representation of the Company; that there were conferred on him each and every one of the powers given to the Board of Directors, by Article XXXVIII of the Articles of this Company. That this resolution is in force and Mr. Schueg continues in possession of his office as Managing Director of the Company on this day.

I further certify that Article XXXVIII of the Articles of Compania Ron Bacardi, S. A., literally reads as follows:—

Article XXXVIII—The Board of Director shall have the

fullest powers for the direction, management and conduct of the company's business, without further limitations than those provided by law or by these Articles; and accordingly shall represent the Company, in law suits and otherwise; they shall have full powers to effect any acts or contracts, whether judicial or extrajudicial; and shall therefore;

(a) Agree to and carry out any and all of the purposes for which the Compania Ron Bacardi S. A. was organized as appears from this deed.

(b) Exercise all the rights and actions of the company, in lawsuits and otherwise, before all authorities, courts, tribunals, offices and officers, as well as to grant powers and confer representation of the company on lawyers, solicitors, judicial mandataries or on any other persons, for the defense of the company's interests together with necessary powers.

(c) Enter into all kinds of contracts of purchase, sale, exchange, delivery and acquisition payment, of mortgage and of extension, modification, extension of time, subrogation, transfer and cancellation of mortgage, of pledge, of lease, whether recordable or not in the Registry of Property or anticresis; or transfer of rights and actions, whether they refer to real or personal property, actions or real rights or of other kinds, at the prices and with the agreements and conditions which it may deem convenient in each case; to give and take loans of money, with or without mortgage security, for the time, amount and conditions which may seem necessary; take back former assets; execute all kinds of contracts, even though not specified herein and even if they bind the company or its assets; execute all kinds of public or private documents and do anything else which may benefit the interests of the company.

(d) Decide all those matters of the company not especially provided for or whose solution is not expressly reserved to a general meeting of the stockholders.

I further certify that on June 8, 1934, on which date Enrique

Schueg y Chassin signed on behalf of Compania Ron Bacardi S. A., organized and existing under the laws of Cuba, an agreement with the Bacardi Corporation of America, a corporation organized and existing under the laws of the State of Pennsylvania, United States of America, which is attached to this certificate, Mr. Schueg was the President and Managing Director of Compania Ron Bacardi S. A.; that on said date the delegation of powers conferred on him by the Board of Directors of this company was in force and also the powers delegated to him contained on Article XXXVIII of the Articles of this company, hereinbefore transcribed.

I further certify that at the meeting held by the Board of Directors yesterday August 3, 1937 at which were present six of the eight directors who form this body, it was unanimously voted to ratify in all its parts the contract entered into between Mr. Schueg, President and Managing Director of the Compania Ron Bacardi S. A. on behalf of the Company, and the Bacardi Corporation of America, on June 8, 1934, the latter being represented by its President Luis J. Bacardi and its Secretary, Mr. Nemesio Alvarez, of which contract there is attached to this certificate an original English copy without a Spanish translation, which is a true and exact copy of the contract entered into on that date between the two companies above mentioned.

In witness whereof I sign these presents upon petition of the President of this company, Mr. Schueg, and affix twenty cents in stamps of the National Excise Tax visaed by the Second Vice-President, Mr. Pedro E. Lay y Lombard, acting as President, inasmuch as the President, Mr. Schueg is an interested party and the first Vice-President is absent in Santiago de Cuba, on August 4, 1937.

COMPANIA RON BACARDI, S. A.,
Manuel Garcia Vidal, Secretary

[COMPANY'S SEAL]

The preceding document has been found to be correct.

Compania Ron Bacardi, S. A.,

Pedro E. Lay, President P. S.

[COMPANY'S SEAL]

I, Doctor Hernando De Hechavarria y De La Pezuela, Lawyer and Notary Public, residing in this capital of Province, certify: that the preceding signatures are genuine, they having been affixed in this proceeding in my presence by Messrs. Pedro E. Lay y Lombard and Lic. Manuel Garcia Vidal, in their respective capacities of Vice-President, acting as President and Secretary of Compania Ron Bacardi, S. A., which gentlemen I personally know; the second one authorizing the certification of certain parts copies from the Minute Books of the general meetings and of the Board of Directors of said company and the first one vising the signature of the second. Santiago de Cuba, on the fourth of August, nineteen hundred and thirty-seven.

Dr. B. HECHAVARRIA

[NOTARIAL SEAL]

Certified to be a true and correct translation.

Frank L. Cole,

Official Translator,

U. S. Dist. Court for P. R.

I, attorney Manuel Garcia Vidal, Secretary of Compania Ron Bacardi S. A., domiciled in this city:—

Certify: That the foregoing is a literal copy of the English original contract, which was notified to the Board of Directors of this Company yesterday, August three, nineteen hundred thirty-seven, and all and each part thereof has been unanimously ratified by the Board, of six of the eight directors who compose same, attending. In witness whereof I sign these presents in Santiago de Cuba, August 4, nineteen hundred Thirty-Seven, to which I affix twenty cents in stamps of the National Tax and visaed by Mr.

Pedro E. Lay y Lombard, Second Vice-President acting as President.

COMPANIA RON BACARDI, S. A.,
Lic. Manuel Garcia, Secretary,

[SEAL]

This document has been found to be correct.

Compania Ron Bacardi, S. A.,
Pedro E. Lay, President P. S.

[SEAL]

Certified to be a true and correct translation.

Frank L. Cole,
Official Translator,
United States District Court for Puerto Rico.

Here follows "License and agreement between Compania Ron Bacardi, S. A. of Santiago de Cuba, Cuba, and Bacardi Corporation of America of Philade'phia, Pennsylvania.

H. EDGAR BARNES, Attorney,
20th Floor Finance Bldg.,
1428 South Penn Square,
Philadelphia, Pa.

Which is not copied as it has already been furnished (Said agreement has been fully transcribed in Plaintiff Exhibit V).

Republic of Cuba, Province of Oriente,
Consulate of the United States of America

At Santiago de Cuba. ss:

I, Owen W. Gaines, Vice Consul of the United States of America in and for the consular district of Santiago de Cuba, in the Province of Oriente, Republic of Cuba, duly commissioned and qualified, do hereby certify that Dr. Bernardo Hechavarria, whose true signature and seal are, to the best of my knowledge and belief, respectively, subscribed and affixed to the foregoing instrument, was, in the 4th day of August, 1937, the day of the date

thereof, Notary Public at the city of Santiago de Cuba, Province of Oriente, Republic of Cuba, to whose official acts faith and credit are due.

For the contents of the annexed document the American Consulate at Santiago de Cuba, Cuba, can assume no responsibility.

In witness whereof I have hereunto set my hand and the seal of the Consulate at Santiago de Cuba, this 4th day of August, 1937.



OWEN W. GAINES,

Vice Consul of the United States of America.

[SEAL]

American Consulate.

Fee \$2-00 Service No. 525 Item No. 38

Cancelled Fee Stamp \$2-00.

EXHIBIT AR FOR PLAINTIFF.

Garcia Vidal Law Office

Lic. Manuel Garcia Vidal

Attorney Notary-Public

Lacret Baja 3 Phone Number 2059 Santiago de Cuba.

Dr. Humberto Garcia Carbonell, Attorney.

(Four five cents stamps cancelled)

I, attorney Manuel Garcia Vidal, Secretary of the commercial and industrial stock company, domiciled in this city, called "Compania Ron Bacardi S. A."

Certify: That on pages one hundred sixty-six to one hundred seventy-three, both inclusive, book third, of the minute book of the Board of Directors of this Company, there appears one which reads literally:

"Minutes Number One Hundred Sixty-Nine.—In the City of Santiago de Cuba, on the eighteenth of December nineteen hundred thirty-seven. In the meeting room of the Compania Ron Bacardi S. A., Aguilera Baja numbers twenty-eight, thirty and thirty-two, there met Messrs. Enrique Schueg y Chassin, President; Pedro E. Lay y Lombard, Second Vice-President; Alberto Acha

y Portes, First Member; Radames Covani y Puccinelli, Second Member; Frederico Bolivar y Estenger, Third Member; Jose Espin y Vivar Fourth Member, and Lic. Manuel Garcia Vidal, Secretary, as per previous notice. Mr. Schueg, President, opens the meeting, inasmuch as almost all of the members of the Board of Directors were present there being a quorum, and states: That on reporting to this Board of Directors at its meeting held on August 3 of this year, as per minutes number one hundred fifty-eight, he had the purpose to give together with his report an account of the additional contract to that of June eight nineteen hundred thirty-four the purpose of the said meeting, and through some inadvertence there was misplaced the document which contains this additional contract entered into by Mr. Schueg who is talking, on behalf of this company with the Bacardi Corporation of America, for which reason the matter was not discussed: That he comes to cure this omission; and therefore reports to the Board that he has entered into an additional agreement to modify some of the clauses of the agreement ratified at the meeting of August three last, to which he has referred; that the said contract in English is as follows:—

"Amendment to Agreement of June 8, 1934: Agreement made this 19th day of December, 1935, between Compania Ron Bacardi, S. A., a company organized and existing under the laws of the Republic of Cuba (hereinafter called Cuban Bacardi), and Bacardi Corporation of America, a corporation organized and existing under the laws of the State of Pennsylvania, United States of America (hereinafter called American Bacardi) — Witnesseth: Whereas, the parties hereto entered into an agreement dated June 8, 1934 whereby Cuban Bacardi granted unto American Bacardi under certain terms and conditions, for certain territories therein described, certain licenses, franchises, rights and privileges connected with the use of the invention, formulae, manufacturing secrets and processes, trade-marks, trade-names, brands, labels and other devices, then owned or thereafter to be developed and Cuban Bacardi, and whereas, it now seems advisable and highly beneficial

to both parties that the territory described in said agreement of June 8, 1934, be increased and extended and that certain provisions of said agreement relating to the payment of royalties be amended and modified. Now, therefore, in consideration of the mutual benefits and promises, and other valuable considerations, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements herein contained, the parties agree that the said agreement of June 8, 1934 shall be and hereby is duly amended, changed and supplemented as follows:

(1) The second paragraph of Section Second of the said agreement, which described and outlines in detail all of the so called "granted territory" wherein the exclusive licenses, franchises, privileges and rights granted to American Bacardi are to apply, shall be amended, changed and supplemented to read: "All of continental United States of America, including Alaska, and the territories and possessions of the United States of America (excepting the Philippine Islands, and the Canal Zone) which territory is hereinafter for convenience called "the granted territory". (2) The schedule of dates and number of gallons recited in the first paragraph of Section Third of the said agreement, which govern the amount of royalties that are to be paid as provided in Section Sixth of the said agreement, shall be amended, changed and supplemented to read: "From June 1, 1934 to December 31, 1938 no royalty shall be paid. From January 1, 1939 to December 31, 1939, upon 250,000 gallons. From January 1, 1940 to December 31, 1940 upon 300,000 gallons. From January 1, 1941 to December 31, 1941, upon 450,000 gallons. From January 1, 1942 to December 31, 1942, upon 550,000 gallons. From January 1, 1943 to December 31, 1944, upon 650,000 gallons. (3) The last sentence of Section Sixth of the said agreement, referring to the dates when the royalty or license fee is to be paid, shall be amended, changed and supplemented to read: "As hereinabove stated, the royalty or license fee is to be paid for each gallon of Bacardi products manufactured and sold by American Bacardi, but no royalty or license fee shall be paid to Cuban Bacardi for sales made during the period extending from June 1st, 1934 to

December 1st, 1938, nor upon sales made at any time for which American Bacardi has been unable to make collection and obtain payment after due and diligent effort on its part." In all other respects and particulars the said agreement of June 8, 1934 is hereby ratified, confirmed and approved in its entirety. It is specifically agreed that the approval and consent by either party to the amendments, changes and supplements herein contained shall not be construed by the other as such an act as will constitute a violation, breach, rescission and or cancellation of the said agreement of June 8, 1934, or as such an act as will require or obligate either party to make other and additional amendments, changes and supplements to the said agreement or as a waiver of any of their respective rights thereunder. In witness whereof, the parties thereto have respectfully caused their names to be written and their corporate seals to be hereunto affixed, duly attested by a proper officer, the day and year first above written,

COMPANIA RON BACARDI, S. A.,

By Henri Schueg, President.

BACARDI CORPORATION OF AMERICA,

by Jose M. Bosch,

Vice-President and Treasurer".

That said original contract in English translated into Spanish is as follows:—

"Enmienda al Convenio del 8 de junio de 1934". Convenio hecho este 19 de diciembre de 1935 entre la "Compania Ron Bacardi, S. A." una compania que se establecio y funciona de acuerdo con las leyes de la Republica de Cuba (que en lo adelante se llamara Bacardi Cubana) y la Bacardi Corporation of America, una corporacion que se establecio y funciona de acuerdo con las leyes del Estado de Pennsylvania, Estados Unidos de America (que en lo adelante se llamara la Bacardi Americana) Por cuanto: las partes al actual convenio suscribieron en fecha 8 de julio de 1934 un contrato mediante el cual la Bacardi Cubana otorgo a la Ba-

cardi Americana, bajo ciertas estipulaciones y condiciones y para determinados territorios descritos en dicho instrumento, determinadas licencias, franquicias, derechos y privilegios relacionados con el uso de invenciones, formulas, secretos industriales, procesos industriales, marcas de fabrica, nombres o marcas comerciales, marcas, etiquetas y otras creaciones o invenciones ya poseidas por la Bacardi Cubana o que en el futuro pudieran ser desarrollados por la dicha Bacardi Cubana, Y Por cuanto ahora parece aconsejable y de alta conveniente para ambas partes que el territorio descrito en el citado contrato del 8 de junio de 1934 sea ampliado y extendido y que determinadas disposiciones del supradicho convenio que se refieren al pago de regalías sean enmendadas y modificadas, Por tanto: en consideracion de beneficios y promesas mutuas; y de otras valiosas consideraciones, recibo de las cuales se consigna por medio de las presentes lineas, y en consideracion ademas de los arreglos y convenios contenidos en este documento, las partes convienen en que el citado contrato de fecha 8 de junio de 1934 sea como por las presentes lo es debidamente modificado, cambiado y suplementado en la forma siguiente:—(1) El segundo parrafo de la Seccion Segunda del dicho contrato, que describe y define en detalle todo el llamado "Territorio" concedido" dentro del cual las licencias, franquicias, privilegios y derechos otorgados a la Bacardi Americana son aplicables, quedara modificado, cambiado y suplementado de modo que rece textualmente: "Todos los Estados Unidos de America en su porcion continental, incluyendo Alaska, y los territorios y posesiones de los Estados Unidos de America (exceptuando las Islas Filipinas y la Zona del Canal) cuyo territorio se designara en lo adelante por razones de convenientia "el territorio otorgado". (2) La lista de fechas y el numero de galones estampados en el primer parrafo de la Tercera Seccion del citado contrato, que rigen el importe de las regalías que deben pagarse de acuerdo con la Sexta Seccion del expresado contrato, seran modificados, cambiados y suplementados de

modo que recen textualmente: "Desde junio 1, 1934 a diciembre 31, 1938, no se pagara regalia alguna. De enero 1, 1939 a diciembre 31, 1939, sobre 250,000 galones. De enero 1, 1940 a diciembre 31, 1940, sobre 300,000 galones. De enero 1, 1941 a diciembre 31, 1941, sobre 450,000 galones. De enero 1, 1942 a diciembre 31, 1942, sobre 550,000 galones. De enero 1, 1943 a diciembre 31, 1944, sobre 650,000 galones. (3) La ultima oracion de la Seccion Sexta del referido contrato, que se refiere a las fechas en las cuales debe pagar el importe de las regalías, sera modificada, cambiada y suplementada de modo que rece textualmente: "Como se expresa mas arriba, la regalia o derecho de licencia ha de pagarse por cada galon de productos Bacardi elaborado y vendido por la Bacardi Americana, pero no se pagara ninguna regalia o derecho de licencia alguno a la Bacardi Cubana por las ventas realizadas durante el periodo que se extiende desde el 1 de junio de 1934 hasta el 1 de diciembre de 1938, ni por ventas, realizadas en cualquier periodo y sobre las cuales la Bacardi Americana no haya podido obtener el correspondiente pago, despues de realizar los esfuerzos debidos y diligentes para obtenerlo." En todos los demas respectos y particulares el expresado contrato del 8 de junio de 1934 se confirma, ratifica y aprueba en su totalidad por medio del presente instrumento. Se conviene especificamente que la aprobacion y el consentimiento por cualquiera de las dos partes a las modificaciones, los cambios y las suplementaciones contenidas en el presente instrumento no podran ser interpretados por la otra como una violacion, contravencion, rescision o cancelacion del citado contrato del 8 de junio de 1934, ni tampoco en sentido de que obligue a cualquiera de las dos partes a efectuar modificaciones, cambios y suplementaciones adicionales al dicho contrato, o como renuncia de cualquiera de sus respectivos derechos dentro del mismo. En testimonio de lo cual, las partes han hecho suscribir sus respectivos nombres y fijar sus sellos corporativos, respetuo-

samente, firmas y sellos autenticados por sus funcionarios autorizados, el día y año mas arriba mencionados.

COMPANIA RON BACARDI S. A.,

pp Henri Schueg, Presidente.

BACARDI CORPORATION OF AMERICA,

pp. Jose M. Bosch,

Vice-Presidente y Tesorero."

This matter being amply discussed after the additional contract herein transcribed was read it was unanimously ratified in each and every one of its parts the additional contract just copied and which is known as "Amendment to the Contract of June 8, 1934" which with this one form one sole document.

I further certify: that Messrs. Enrique Schueg y Chassin, Pedro E. Lay y Lombard, y Alberto Acha y Portes and myself, Lic. Manuel Garcia Vidal, were elected by secret ballot, the first one, President; the second, Second-Vice-President; the third, First Member and I, Secretary, for a term to expire on March 15 nineteen hundred and thirty-eight, at a general meeting of stockholders of this company held on the twenty-eighth of February nineteen hundred thirty-six, at which were present persons representing twenty-thousand eight hundred sixty-nine shares; that Messrs. Radames Covani y Puccinelli, Federico Bolivar y Estenger y Jose Espin y Vivar were unanimously elected by secret ballot, the first, Second Member; the second, Third Member, and the third, Fourth Member of this company for a term which will expire the fifteenth of March, nineteen hundred thirty-nine, at the General Meeting of Stockholders held on the fifteenth of March nineteen hundred thirty-seven at which were present in person or by proxy, owners of thirty-one thousand seventy-eight shares, the capital stock being composed at both general meetings of thirty-five thousand shares; that all the members of the Board of Directors herein named, took possession of their respective positions and are at present occupying them.

The foregoing agrees with the original Minute Books of the

General Meetings of Stockholders and of the Board of Directors of this company, which I certify; and under my responsibility I declare that the items contained in this certificate are true, and the resolutions passed and herein certified are still in effect that Mr. Enrique Schueg y Chassin, President, who visaes this certificate, and myself, Lic. Manuel Garcia Vidal, Secretary, are in possession of our respective positions.

In witness whereof I issue these presents visaed by the President, Mr. Schueg, to which I affix the seals of the National Excise Tax for the value of twenty cents, in Santiago de Cuba, December twenty, nineteen hundred thirty-seven.

COMPANIA RON BACARDI S. A.,

Lic. Manuel Garcia, Secretary.

The preceding document has been found to be correct.

Compania Ron Bacardi S. A.,

Henri Schueg, President.

Doctor Bernardo De Hechavarria y de La Peziela, attorney and Notary Public with residence in this capital of Province.—I certify: That the preceding signatures are genuine, they having been affixed in this act, in my presence, by Messrs. Enrique Schueg y Chassin and Lic. Manuel Garcia Vidal, President and Secretary respectively of the Compania Ron Bacardi S. A. which gentlemen I personally know, the second authorizing the certificate of certain parts copied from the minute books of General Meetings and of the Board of Directors of said company, and the first one visaeing the signature of the second, Santiago de Cuba, December twenty, nineteen hundred thirty-seven.

[NOTARIAL SEAL]

B. HECHAVARRIA

Certified to be a true and correct translation.

Frank L. Cole,

Official translator,

United States District Court for Puerto Rico.

Republic of Cuba, Province of Oriente
Consulate of the United States of America

At Santiago de Cuba. ss:

I, Owen W. Gaines, Vice Consul of the United States of America in and for the consular district of Santiago de Cuba, in the Province of Oriente, Republic of Cuba, duly commissioned and qualified, do hereby certify that Dr. Bernardo de Hechavarria, whose true signature and official seal are, respectively, subscribed and affixed to the foregoing certificate, was, on the 20th of December, 1937, the day of the date thereof, Notary Public at the city of Santiago de Cuba, Province of Oriente, Republic of Cuba, to whose official acts faith and credit are due.

For the contents of the annexed document the American Consulate at Santiago de Cuba, Cuba, can assume no responsibility.

In witness whereof I have hereunto set my hand and the seal of the Consulate at Santiago de Cuba, Cuba, this 21st day of December, 1937.

HARRY W. STORY,

[SEAL]

Vice Consul of the United States of America
American Consulate.

Cancelled Fee Stamp \$2-00.

Service No. 898 Item No. 38—Fee \$2-00

EXHIBIT AS FOR PLAINTIFF.

BACARDI CORPORATION OF AMERICA

Certified Copy of Resolutions of Board of Directors.

The undersigned, George W. Witney, duly deposes and states that he resides in Philadelphia, Pennsylvania, and that he is Secretary of Bacardi Corporation of America, a corporation organized and existing under the laws of the State of Pennsylvania.

He further deposes and states that the resolution recited below was duly adopted by the Board of Directors of said corporation at a meeting duly held March 20, 1936 at which a quorum was present, and that the form herewith recited is a true and accurate

copy of said resolution as the same appears in the record of said meeting in the minute book of the said corporation, viz:

"Be it further resolved that the Amendment of December 19, 1935 to the Agreement of June 8, 1934 between this company and Compania Ron Bacardi, as presented at this meeting and as executed as of December 19, 1935 by Jose M. Bosch, Vice-President and Treasurer, be and the same hereby is duly ratified, confirmed and approved, and

"Be it further resolved that a copy of the said amendment be filed with the minutes of this meeting as a part thereof, and

"Be it further resolved that all contracts, agreements, leases, and arrangements of all kinds heretofore made by Jose M. Bosch, Vice-President and Treasurer of this company, in connection with the opening of a plant for the manufacture, sale and distribution of Bacardi products on the Island of Porto Rico, be and the same hereby is duly ratified, confirmed and approved. . . .

In witness whereof he has duly attached his signature hereto and the seal of the corporation this 20th day of December, 1937.

GEORGE W. WHITNEY,

[Seal Bacardi Corporation of America]

Commonwealth of Pennsylvania

County of Philadelphia, ss:

On this 20th day of December A. D. 1937 before me a Notary Public in and for the County of Philadelphia, State of Pennsylvania, personally appeared George W. Witney known to me to be the person whose name is subscribed to the attached instrument and duly acknowledged that he had executed the same and requested me to certify to such fact.

Regina L. Hoey

Notary Public

[NOTARIAL SEAL]

In the Courts of Common Pleas of Philadelphia County
State of Pennsylvania

County of Philadelphia, ss:

I, John M. Scott, Prothonotary of the Courts of Common Pleas of said County which are Courts of Record having a common seal, being the officer authorized by the laws of the state of Pennsylvania to make the following certificate, acting by my Principal Deputy, Meredith Hanna, or my Second Deputy, John J. Hoerr,

Do Certify that Regina L. Hoey, Esq., whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe the signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

The impression of the seal of the Notary Public is not required by law to be filed in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this eight day of January in the year of our Lord one thousand nine hundred thirty-eight (1938).

John M. Scott, Prothonotary,

By: John J. Hoerr, Second Deputy Prothonotary.

Durante Absentia, Secundum Legem.

[Seal—Court of Common Pleas]

The transmission to the Circuit Court of Appeals of Plaintiff's original Exhibits "AT", "AU", "AV" and "AW" will be requested.

EXHIBIT AX FOR PLAINTIFF.

The People of Puerto Rico
Department of Finance
Bureau of Alcoholic Beverages and Narcotics

San Juan, Puerto Rico, January 27th, 1937.

Bacardi Corporation of America, San Juan, Puerto Rico,

Sirs: Reference is made to your letters of January 25 and 27, 1937, submitting for consideration of this Department labels of 4/5 Pint, 1 Pint and 4/5 Quart, for "Ron Hatuey", and photo-static copy of approval of the Federal Alcohol Administration of said labels.

You are advised that the label for containers of 4/5 Quart has been approved by the Department, but the labels for 4/5 Pint and 1 Pint are not approved, as the phrase "Puerto Rican Rum" does not meet the requirements of the regulations in force.

If it so happens that you have a large quantity of these smaller labels of 4/5 Pint and 1 Pint on hand, same may be used, provided an additional label is affixed to each bottle of rum manufactured in Puerto Rico with the said phrase printed in accordance with the size required by regulations of the Treasurer.

Respectfully,

R. SANCHO BONET

Treasurer of Puerto Rico.

CONSUMPTION

Ren Hatuey

89 PROOF

4/5 QUART

PUERTO RICAN RUM

PREPARED AND BOTTLED BY

BACARDI CORP.

OF AMERICA

SAN JUAN, P.R.

Produced in special license and under the supervision of
BACARDI & CO. SANTIAGO DE CUBA

BACARDI & CO. SANTIAGO DE CUBA

Form L 5 Treasury Department
Federal Alcohol Administration February, 1936
Certificate of Approval of Labels of Domestically Bottled
Distilled Spirits.

Date—January 20, 1937.

Pursuant to the application of Bacardi Corporation of America, whose address is San Juan, Porto Rico, the labels affixed to the reverse side hereof covering Ron Hatuey (Brand name) Rum (Class and type of distilled spirits) are hereby approved.

Labels identical with those affixed to the reverse side hereof except in respect to size and statement of net contents appearing thereon in conformity with section 37 of Regulations 5 are also approved for use on bottles which conform to the requirements of article VII of Regulations 5.

A separate label known as the government label prepared in conformity with circular letter FA-41, and containing the mandatory label information required by section 32(c) of Regulations 5 (may but need not) be used on bottles bearing the labels hereby approved.

Distilled spirits in bottles bearing the labels hereby approved and the proper government labels if required are authorized to be removed from the plant where bottled.

This certificate shall not operate to relieve any person from liability or any violation of the Federal Alcohol Administration Act or Regulations thereunder resulting from the failure of any bottle bearing the labels herein approved or the contents of such bottle to conform to the statement and representations made on such labels.

W. S. ALEXANDER,
Administrator Federal Alcohol Administration,
Washington, D. C.

IDENTIFICATION NO. 1 FOR PLAINTIFF.

(Evidence Offered and Refused)

The Memorial of Puerto Rican rum producers to the Legislature of Puerto Rico is not set out in full here because it forms part of the complaint and is attached thereto.

IDENTIFICATION NO. 2 FOR PLAINTIFF.

(Evidence Offered and Refused)

Senate of Puerto Rico San Juan, P. R.

E. Gonzalez Mena Secretary.

I, Enrique Gonzalez Mena, Secretary of the Senate of Puerto Rico, certify:

That in the records of the session held by the Senate of Puerto Rico on April 15, 1937 (Sixty-seventh day of the First Regular Legislature of the Fourteenth Legislative Assembly) there appear the following particulars relative to House Bill 561 (Act No. 149, approved May 15, 1937):

"Three communications from the Secretary of the House of Representatives are read, remitting the following bills approved by the same, the numbers and titles of which are as follows:

"H. B. 561—To amend section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved

May 15, 1936, and for other purposes"; to amend section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits, to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 44 of said Act by imposing conditions upon the holders of such permits; to add section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval."

"The Secretary then reads the titles of said bills, which, after having been considered on first reading, by order of the President, shall be referred to the Finance and Improvement Committee.

"Upon motion of Senator Reyes Delgado, Subs. H. B. 297 and H. B. 321 and 561, already mentioned, go to second reading to be discussed before the Whole Committee, and without consideration by the Finance and Improvement Committee.

"The Senate is constituted in Committee of the Whole, and by order of its President it discusses, in the order in which they have been introduced, the bills the numbers and titles of which are as follows:

"H. B. 561—To amend section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for The People of Puerto Rico by levying internal revenue taxes on alcoholic spirits and alcoholic beverages,

and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes;" to amend section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend section 14 of said Act by imposing conditions upon the holders of such permits; to add section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval."

.

"After having finished its deliberations, the Committee of the whole presented its report, through its President, as follows:

.

"Second: The Committee of the Whole proposes that H. B. 561 be approved with the following amendments:

"Page 3:

"Line 5.—Substitute 'less than', at the end of same, for '4/5 pint and less'.

"Line 6.—Strike out 'half pint'.

"Line 16.—After 'bottler', substitute the semi-colon (;) for a period (.) and quotations (") , striking out the rest of the line.

"Strike out everything contained in line 17 and succeeding lines up to 25, inclusive.

"Page 4:

"Strike out everything contained in line 1 and following lines, up to line 6, inclusive.

"Line 24.—In the amendment inserted by the House in ink, between 'manufactured' and 'in' and after 'Rico' insert a comma (,) and add 'or in Continental United States'.

"Page 5:

"Line 6.—Strike out the amendment in ink inserted by the House between 'be' and 'shipped', or that is, the following: 'transported'.

"Strike out everything contained in lines 23, 24 25, inserting in their place the following:

" '(b) Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceedings as may be necessary, to demand protection against violations of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty thousand (30,000) dollars.'

"Page 6:

"Strike out everything contained in lines 1, 2 and 3."

"Each one of the items of the preceding report of the Committee of the Whole is considered by the Senate and voted, it being approved.

"The President states that there have been approved on second reading H. B. 409, H. B. 561 and S. B. 48.

"Upon motion of Senator Garcia Mendez, the Senate decides to consider on third reading said bills.

"H. B. 561 is considered on third reading and voted, which voting gives the following result:

"Affirmative votes:

Messrs. Benvenuti, Berrios,
Echevarria, Fiz Jimenez,
Garcia Mendez, Garcia Veve,
Iriarte, Ochart y Pacheco,
senora Perez Almiroty, senores
Ramos, Reyes Delgado, Serralles,
Valdes, Villanueva and the
President, Mr. Martinez Nadal 16

"Negative votes: 0

"Abstained votes:

Mr. Bolivar Pagan 1

"(It is stated that before the forgoing voting was taken, Mr. Bolivar Pagan requested and obtained the unanimous consent of the Senate to abstain from voting).

"The President states that H. B. 561 has been approved on third reading (by 16 affirmative votes) and orders that it be returned to the House of Representatives."

"Upon motion of Mr. Serralles, the Senate decides to request from the House of Representatives the return, for the purpose of reconsidering it, of H. B. 561, 'To amend Section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled 'An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the

Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes; "to amend section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 14 of said Act by imposing conditions upon the holders of such permits; to add Section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval."

"The following communication is read:

'House of Representatives of Puerto Rico.

Office of the Secretary.

San Juan, Puerto Rico, April 15, 1937.

Sir:—In compliance with the petition of that body, the House, in today's session, consented to return to the Senate, for reconsideration, H.B. 561 (Liquor Law). Complying with the said consent I return herewith three official copies of said bill.

Very truly yours,

(Sgd.) ANTONIO ARROYO,

Secretary, Hon. President,

Senate of Puerto Rico, San Juan, Puerto Rico.'

"Upon motion of Mr. Serralles, the Senate resolves to reconsider on second reading H.B. 561, to which the above transcribed communication refers, sending it to this effect to the Order of the Day.

"Upon motion of Senator Iriarte, the Senate is constituted

in Committee of the Whole, and it discusses, in the order in which they have been introduced by order of the President, the following matters in the Order of the Day:

"Fifth: H.B. 561, 'To amend Section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes;" to amend Section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 14 of said Act by imposing conditions upon the holders of such permits; to add Section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval.'

"After having finished its deliberations, the Committee of the Whole presents its report, through its President, proposing:

"Fifth: That H.B. 561, taking it as it was previously approved by the Senate, be again approved with the following amendments:

'Page 4:

"Line 17.—Between 'mark', and 'name', insert 'name',.

"Line 24.—After 'Rico', amendment in ink by the House, strike out the comma (,) and the following, which appears as an amendment in ink by the Senate: 'or in Continental United States'.

"Page 6:

"Between lines 15 and 16, insert a new section which will read as follows:

'Section 7.—In regard to trade-marks, the provisions of the Proviso of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1, 1936, provided such trade marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner, of distilled spirits outside of the continental United States, at any time prior to said date.'

"Line 16.—Substitute '7', amendment in ink by the House, for '8'.

"The President presents separately, to the Senate, for its consideration, each one of the items of the preceding report of the Committee of the Whole, the same being voted and approved unanimously, with the exception of the item relative to H.B. 23, which was approved by a majority.

"Subs. S.B. 279, H.J.R. 118 and H.B. 23 are approved on second reading; and H.B. 561 is again approved on second reading, after having been reconsidered in such manner.

"By an agreement of the Senate, adopted upon motion of Mr. Serralles, H. P. 561 is reconsidered now in third reading and voted, which voting was taken with the following result:

"Affirmative votes:

Messrs. Benvenuti, Berrios,
Echevarria, Fix Jimenez,
Garcia Mendez, Garcia Veve,
Iriarte, Ochart, Pacheco,
Ramos, Reyes Delgado, Se-
rralles, Valdes and the Pre-
sident Mr. Martinez Nadal14

"Negative votes: 0

"The President states that H.B. 561 has been reconsidered on third reading and once more approved in such manner, unanimously (14 votes on the affirmative) and orders that said bill be returned for a second time to the House of Representatives."

"Several communications from the Secretary of the House of Representatives are then read stating that the House has accepted the amendments introduced by the Senate to the bills the numbers and titles of which are as follows:

"H.B. 561.—To amend Section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled 'An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture, and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes;" to amend section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon

such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 44 of said Act by imposing conditions upon the holders of such permits; to add section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval."

.

"Several communications from the Secretary of the House of Representatives are then read sending the bills the numbers and titles of which are as follows, signed by the Speaker of the House and requesting the President of the Senate to sign them:

.

"H.B. 561. To amend section 1 by adding section 1-b which declares the principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes;" to amend section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend

Section 44 of said Act by imposing conditions upon the holders of such permits; to add section 44(b) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend section 97 of said Act, by providing for remedies before the proper courts; to amend section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval."

"The President announces that he is going to sign, and signs the bills referred to and orders their return to the House of Representatives."

And to be sent to Messrs. Hartzell, Kelley & Hartzell, of San Juan, Puerto Rico, at their request, I issue, sign and seal this certification in my office, this fifth day of August of the year one thousand nine hundred thirty-seven.

ENRIQUE GONZALEZ MENA,

Secretary of the Senate of Puerto Rico.

The People of Puerto Rico
Office of the Executive Secretary

Know all men by these Presents:—

That in accordance with a request of Messrs. Hartzell, Kelley & Hartzell, of San Juan, P. R., I, M. Ashford, Acting Executive Secretary of Puerto Rico, do hereby certify: That from the records of this office it appears that "Brugal & Compania, C. Por A." is a corporation organized under the laws of the Dominican Republic, to which a certificate of registration was issued by this office on the ninth day of July, nineteen hundred and thirty-four.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this tenth day of August, A. D., nineteen hundred and thirty-seven.

M. ASHFORD,

Acting Executive Secretary.

[Seal of Puerto Rico]

The People of Puerto Rico
Office of the Executive Secretary

Know all men by these Presents:—

That in accordance with a request of Messrs. Hartzell, Kelley and Hartzell, of San Juan, P. R., I, M. Ashford, Acting Executive Secretary of Puerto Rico, do hereby certify: That from the records of this office it appears that "National Liquor Company Inc." is a corporation organized under the laws of Puerto Rico, to which a certificate of registration was issued by this office on the thirtieth day of June, nineteen hundred and thirty-four.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this tenth day of August, A. D., nineteen hundred and thirty-seven.

M. ASHFORD,

Acting Executive Secretary.

[Great Seal of Puerto Rico]

The People of Puerto Rico
Office of the Executive Secretary

Know all men by these Presents:—

That in accordance with a request of Messrs. Hartzell, Kelley & Hartzell, of San Juan, P. R., I, M. Ashford, Acting Executive Secretary of Puerto Rico, do hereby certify: That from the records of this office it appears that "Compania Ron Carioca Destileria, Inc., is a corporation organized under the laws of the State of Delaware, to which a certificate of registration was issued by this office on the sixth day of August, nineteen hundred and thirty-six.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this tenth day of August, A. D., nineteen hundred and thirty-seven.

M. ASHFORD,

Acting Executive Secretary.

[Great Seal of Puerto Rico]

EXHIBIT A FOR INTERVENOR.

The People of Puerto Rico
Department of Finance

Bureau of Alcoholic Beverages and Narcotics.

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, by these presents certify:

That in accordance with the files of the Bureau of Alcoholic Beverages and Narcotics of the Treasury Department, permits have been issued to Puerto Rico Distilling Co., of Arecibo, Puerto Rico, which authorize it to distill, rectify and warehouse distilled spirits, in Puerto Rico, in accordance with the laws of Puerto Rico and Regulations applicable thereto, and the Federal Laws and regulations applicable thereto.

In witness whereof, and on petition of Ronrico Corporation, of San Juan, Puerto Rico, I have signed these presents and caused the official seal of this Department to be affixed hereto, in the City of San Juan, Puerto Rico, on this seventh day of August, 1937.

R. SANCHO BONET, Treasurer of Puerto Rico,
By F. A. Ramirez Vega, Assistant-Treasurer.

Internal Revenue Stamps for \$1-50 cancelled.

IDENTIFICATION NO. 2 FOR INTERVENOR.

The People of Puerto Rico
Department of Finance

Bureau of Alcoholic Beverages and Narcotics.

I, Rafael Sancho Bonet, Treasurer of Puerto Rico, do certify by these Presents:

That as recorded in the files of the Bureau of Alcoholic Beverages and Narcotics of the Finance Department, the firm Ronrico Corporation, of San Juan, Puerto Rico, on behalf of Puerto Rico Distilling Company, of America, Puerto Rico, has shipped rum from January 1, 1936, up to June 30, 1937, in the amount

of 281,060.8 gallons proof, Puerto Rico Distilling Company, of Arecibo, having paid the taxes thereon in the amount of \$562,121.60.

In witness whereof, and on petition of Ronrico Corporation, of San Juan, Puerto Rico, I have signed these presents and caused the official seal of this Department to be affixed hereto, in the city of San Juan, Puerto Rico, this the 7th day of August, 1937.

R. SANCHOT BONET, Treasurer of Puerto Rico,

by F. A. Ramirez Vega, Assistant-Treasurer.

Internal Revenue Stamps for \$1-50 cancelled.

The transmission to the Circuit Court of Appeals of intervenor's original Exhibit "B" will be requested.

EXHIBIT C FOR INTERVENOR.

La Correspondencia
March 20, 1937.

Try Hatuey

A good rum at everybody's reach

Made by Bacardi

Rum 89 Proof

(Bat in a circle)

The transmission to the Circuit Court of Appeals of intervenor's original Exhibits "D", "E", "F", "G", "H", "I" and "J" will be requested.

ORDER.

[Filed February 24, 1939.]

On this twenty-fourth day of February, 1939, the foregoing statement, having been presented to me, the same is hereby in all things allowed and approved, and the same is hereby ordered filed as a "Statement of the Evidence", to be included in the

record of appeal in the above entitled cause, as provided in paragraph "b" of Equity Rule 75.

ROBT. A. COOPER,
District Judge.

[MEMORANDUM: Orders of enlargement of time for docketing cases to, and including April 21, 1939, are here omitted. A. I. CHARRON, *Clerk.*]

MOTION FOR AN ORDER FOR THE TRANSMITTAL OF CERTAIN
ORIGINAL EXHIBITS AS PART OF THE RECORD.

[Filed November 28, 1938.]

Now comes, intervenor-appellant, Destileria Serralles, Inc., and respectfully states:

1. That intervenor-appellant has lodged on this day, November 28, 1938, in the office of the clerk of this court, a statement of evidence for use in connection with its appeal from the decree made and entered in the above entitled cause on the thirtieth day of June, 1938.

2. That Plaintiff's Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AV" and "AW" consist of labels, samples of advertisements and photographs, and that Intervenor-Appellant's Exhibits "B", "D", "E", "F", "G", "H", "I", and "J" consist of samples of advertisements with pictures which requires that said original exhibits be transmitted to the clerk of the Circuit Court as part of the record.

Wherefore Destileria Serralles Inc., respectfully prays that an order be entered by this court directing the clerk to transmit the above mentioned original exhibits as part of the record on appeal.

San Juan, Puerto Rico, November 28, 1938.

ANTONIO J. MATTA,
J. SIFRE JR.,

Solicitors for

DESTILERIA SERRALLES, INC.,
Intervenor-Appellant.

Copy received this twenty-eighth day of November, 1938.

HARTZELL KELLEY & HARTZELL,

by RAFAEL FERNANDEZ,

Solicitors for

BACARDI CORPORATION OF AMERICA,

Plaintiff-Appellee.

Be it so.

ROBT. A. COOPER, *Judge.*

MOTION REGARDING TRANSMITTAL OF CERTAIN ORIGINAL
EXHIBITS AS PART OF THE RECORD.

[Filed January 26, 1939.]

Now comes the plaintiff-appellee, Bacardi Corporation of America, by its undersigned attorneys, and respectfully states:

I. That the plaintiff consents to and makes its own that part of the motion filed by the intervener-appellant Destileria Serralles, Inc., on November 28, 1938, wherein it is requested that the originals of Plaintiff's Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AV", and "AW" be transmitted to the clerk of the Circuit Court of Appeals as part of the record of this case; and the plaintiff has no objection to the transmittal of original Intervener-Appellant's Exhibit "J".

II. That the plaintiff-appellee objects to that part of the said motion of intervener-appellant Destileria Serralles, Inc., wherein it is requested that the originals of Intervener's Exhibits "B", "D", "E", "F", "G", "H" and "I" be transmitted to the clerk of the Circuit Court as part of the record, because the said exhibits are part of the evidence presented by intervener Puerto Rico Distilling Company, which has not taken an appeal in this case, and the evidence presented by it was not adopted in any form by the defendant nor by the other intervener Destileria Serralles, Inc.

III. That plaintiff respectfully moves that this court order that the original labels attached to Plaintiff's Exhibits "AL", "AM", and "AP", be transmitted to the clerk of the Circuit of Appeals

as part of the record as it is impossible to make true and exact copies thereof.

Wherefore, the plaintiff respectfully prays that on order be entered by this court in accordance with this motion.

San Juan, Puerto Rico, January 26, 1939.

HARTZELL, KELLEY & HARTZELL,

by RAFAEL FERNANDEZ,

Attorneys for Plaintiff-Appellee.

Copy received this twenty-sixth day of January, 1939.

JAIME SIFRE Jr.,

ANTONIO J. MATTA,

Attorney for Intervener, DESTILERIA SERRALLES, INC.

ORDER.

[Filed February 11, 1939.]

Intervener-appellant Destileria Serralles, Inc., filed a motion, dated November 28, 1938, requesting the transmittal to the Circuit Court of Appeals for the First Circuit of certain original exhibits in connection with the appeal taken in this case; and plaintiff-appellee Bacardi Corporation of America filed a motion dated January 26, 1939, consenting in part and objecting in part to the said motion of Destileria Serralles, Inc. and requesting that some of plaintiff's original exhibits be also transmitted to the clerk of the Circuit Court of Appeals as part of the record on appeal.

The parties having been heard on the said motions, the court hereby grants the requests as to which there is no controversy, and therefore orders that when the record of the appeal in this case is sent to the Circuit Court of Appeals for the First Circuit, that the originals of Plaintiff's Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AV", "AW", "AL", "AM" and "AP"; and the original of Intervener-Appellant's Exhibit "J", be transmitted to the said court as part of the record on appeal.

As to the request of intervener-appellant Destileria Serralles,

Inc. for the transmittal to the Circuit Court of Appeals of the originals of Intervener's Exhibits "B", "D", "E", "F", "G", "H", and "I", which were presented in evidence by intervener Porto Rico Distilling Company, the court overrules the objection made by the plaintiff-appellee to the said request, and orders that the originals of said Intervener's Exhibits "B", "D", "E", "F", "G", "H", and "I" be transmitted to the said court as part of the said record on appeal. To this ruling plaintiff-appellee excepted.

Given at San Juan, P. R. this eleventh day of February, 1939.

ROBT. A. COOPER,

District Judge.

PRAECEPTE.

[Filed March 9, 1939.]

To the Clerk of the United States District Court for the District of Puerto Rico:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the First Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following, and no other papers and exhibits, to wit:

1. Bill of complaint, as amended.
2. Defendant's motion to dismiss.
3. Defendant's answer.
4. Opinion, findings of facts and conclusions of law on the permanent injunction, filed May 9, 1938.
5. Additional findings of facts filed June 28, 1938.
6. Final decree.
7. Memoranda stating the following:
 - (a) Date of petition for appeal.
 - (b) Date of order allowing appeal.
 - (c) Date, penalties, names of obligors and conditions of appeal bond.
 - (d) Date of citation and of service thereof.

8. Defendant's assignment of errors.
9. Stipulation as to one record.
10. Order on stipulations as to one record.
11. Order extending the time for filing the transcript of record, dated August 24, 1938, January 30, 1939 and February 21, 1939.
12. Journal entries of November 25, 1938 and December 28, 1938 as to order of court extending time to file record on appeal.
13. Statement of the evidence and order approving same.
14. Order of February 11, 1939 for sending up certain original exhibits.
15. This praecipe.

Said transcript to be prepared as required by law and the rules of this court and the rules of the United States District Court of Appeals for the First Circuit, and to be filed in the office of the clerk of the latter court at Boston, Massachusetts, on or before the thirty-first day of March, 1939, pursuant to the order of this court enlarging and extending said time, the said transcript to be printed under the supervision of the clerk of the Circuit Court of Appeals for the First Circuit.

San Juan, Puerto Rico, March 9, 1939.

B. FERNANDEZ GARCIA,
Attorney General.

JESUS A. GONZALEZ,
Assistant Attorney General.

E. CORDOVA DIAZ,
Deputy Attorney General.

Service of above praecipe and receipt of copy thereof acknowledged this ninth day of March, 1939.

HARTZELL, KELLEY & HARTZELL,
RAFAEL FERNANDEZ,
Attorney for Appellee.

MOTION.

[Filed March 6, 1939.]

Now comes intervenor-appellant Destileria Serralles, Inc., through its undersigned attorneys and respectfully alleges:

1. That the petitioner desires to include in the transcript of the record to be filed in the United States Circuit Court of Appeals for the First Circuit, the following:

- (a) Bill of complaint, as amended.
- (b) Petition for intervention filed by Destileria Serralles, Inc., and order allowing the same.
- (c) Answer of Destileria Serralles, Inc.
- (d) Journal entries of dates of the trial, from January 17, to January 20, 1938.
- (e) Findings of fact and conclusions of law.
- (f) Opinion, decree and order granting the permanent injunction.
- (g) Memoranda stating the following:
 - (1) Date of petition for appeal;
 - (2) Date of order allowing the same;
 - (3) Date, penalties, names of the obligors and conditions of the appeal bond;
 - (4) Date of the citation and date of the service thereof.
- (h) Assignment of errors.
- (i) Statement of evidence and order approving the same.
- (j) Orders extending the time for the filing of the transcript of the record dated August 23, 1938, November 26, 1938, January 9, 1939 and February 21, 1939.
- (k) Order of February 11, 1939 for the sending up of certain original exhibits, to wit: Plaintiff's original Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AW", "AL", "AM", and "AP"; intervenor-appellant's original Exhibit "J", and intervenor Porto Rico Distilling Company's original Exhibits "B", "D", "E", "F", "G", "H" and "I".

(1) Order of the court granting this motion.

2. That the petitioner is willing to stipulate as to what shall form part of the record on appeal but the attorneys for the plaintiff-appellee, Bacardi Corporation of America, refuse to do so upon the ground that Rule 14, Paragraph 3 of the Revised Rules of the United States Circuit Court of Appeals for the First Circuit, do not apply.

3. That according to Rule 14, Paragraph 3 of the Revised Rules of the United States Circuit Court of Appeals for the First Circuit, where there is no agreement between the parties as to what shall form part of the record, the trial judge upon application and after reasonable notice to the opposite party shall determine what must be included in such transcript.

Wherefore, your petitioner prays that an order be entered by this honorable court determining what shall be included in the transcript of the record on appeal.

San Juan, P. R. March 6, 1939.

ANTONIO J. MATTA,
J. SIFRE JR.,

Attorneys for Intervenor-Appellant,
DESTILERIA SERRALLES INC.

Copy received this sixth day of March, 1939.

HARTZELL, KELLEY & HARTZELL,
RAFAEL FERNANDEZ,

Attorneys for Plaintiff-Appellee,
BACARDI CORPORATION OF AMERICA.

MOTION OF PLAINTIFF-APPELLEE WITH REFERENCE TO
TRANSCRIPT ON APPEAL.

[Filed March 10, 1939.]

Now comes the plaintiff-appellee Bacardi Corporation of America, through its undersigned attorneys, and respectfully states:

I. With reference to paragraph 2 of the motion filed by intervenor-appellant Destileria Serralles, Inc. dated March 6, 1939, the

plaintiff-appellee says that it has been unwilling to make a stipulation for the transcript of the record on appeal in this case as proposed by the intervener-appellant Destileria Serralles, Inc., in accordance with paragraph 3 of Rule 14 of the Rules of the United States Circuit Court for the First Circuit, because the plaintiff-appellee believes that the instant case being one in equity, the procedure should be that set forth in Rule 75 of the "Rules of Practice for the Courts of Equity of the United States" adopted November 4, 1912, effective February 1, 1913.

II. That if this court should decide that the Rules of the United States Circuit Court for the First Circuit should control in this case as contended by the intervener-appellant Destileria Serralles Inc. then the plaintiff-appellee, Bacardi Corporation of America, respectfully requests that in addition to the documents enumerated in the above mentioned intervener-appellant's motion of March 6, 1939, the following other documents be included in the transcript of the record on appeal.

- (a) "Opinion, Findings of Fact and Conclusions of Law", entered by this court on May, 6, 1938, in the case of Rafael del Valle Pijem v. Rafael Sancho Bonet, Treasurer of Puerto Rico, Equity No. 2237.

This document is necessary because it is referred to in the opinion of the court on the permanent injunction in the instant case.

- (b) Proposed findings of fact and conclusions of law submitted by plaintiff on May 24, 1938.
- (c) "Plaintiff's Exception to the Conclusions of Law" dated June 30, 1938.

These documents are necessary in order that the plaintiff-appellee may be able to show the findings of fact and conclusions of law submitted by it and those not adopted by the court, to lend support to the final decree herein.

- (d) Transcription of title and of paragraph XXIII of "Motion

for Corrections to Statement of Evidence", filed by plaintiff-appellee on January 26, 1939.

- (e) Order of February 11, 1939, concerning corrections to the statement of evidence filed by intervener-appellant Destileria Serralles Inc.
- (f) "Motion for an Order for the Transmittal of Certain Original Exhibits as Part of the Record", filed by intervener-appellant Destileria Serralles Inc. on November 28, 1938.
- (g) "Motion Regarding transmittal of Certain Original Exhibits as Part of the Record", filed by plaintiff-appellee on January 26, 1939.

These documents are necessary in order to enable the plaintiff-appellee to insist on the point that the evidence submitted by intervener Puerto Rico Distilling Co. should not be considered on this appeal.

San Juan, Puerto Rico, March 9, 1939.

HARTZELL, KELLEY & HARTZELL,

by RAFAEL FERNANDEZ,

Attorneys for Plaintiff-Appellee.

Copy received this tenth day of March, 1939.

JAIME SIFRE Jr.,

ANTONIO J. MATTA,

Attorney for Intervener-Appellant,

DESTILERIA SERRALLES, INC.

ORDER SETTLING CONTENTS OF THE TRANSCRIPT OF THE
RECORD.

[Filed March 15, 1939.]

On motion of Destileria, Serralles, Inc., intervenor-appellant, in the above-entitled cause to determine how much of the record in said cause shall be included in the transcript of the record on appeal in the said cause in the United States Circuit Court of Appeals for the First Circuit, and after hearing counsel for both the appellants and appellee, it is ordered that the transcript of

the record shall contain copies of the following papers, and no others:

1. Bill of complaint, as amended.
2. Defendant's motion to dismiss.
3. Defendant's answer.
4. Petition for intervention filed by Destileria Serralles, Inc., and order allowing same.
5. Answer of Destileria Serralles, Inc.
6. Journal entries of dates of trials from January 17 to January 20, 1938.
7. Findings of fact and conclusions of law on the permanent injunction filed May 9, 1938.
8. Plaintiff's proposed conclusions of law Nos. 15 and 16 submitted by plaintiff on May 24, 1938.
9. Additional findings of fact filed June 28, 1938.
10. Plaintiff's exception to the conclusions of law dated June 30, 1938.
11. Opinion, decree and order granting the permanent injunction.
12. Memorandum stating the following:
 - (a) Date of petition for appeal
 - (b) Date of order allowing same
 - (c) Date, penalties, names of obligors and conditions of the appeal bond
 - (d) Date of citation and date of service thereof.
13. Defendant's assignment of errors.
14. Assignment of errors of Destileria Serralles, Inc.
15. Stipulation as to one record and the order on said stipulation.
16. Orders extending the time for the filing, settling and approval of the statement of the evidence dated August 24, 1938, November 5, 1938, November 26, 1938, December 15, 1938, January 9, 1939, January 31, 1939, February 9, 1939 and February 24, 1939.

17. Transcription of title and paragraph 23 of motion for correction of the statement of the evidence filed by plaintiff-appellee on January 26, 1939.

18. Order of February 11, 1939, concerning corrections to the statement of the evidence filed by intervenor-appellant, Destileria Serralles, Inc.

19. Statement of evidence and order approving the same.

20. Orders extending the time for the filing of the transcript of the record by intervenor-appellant Destileria Serralles, Inc., dated August 23, 1938, November 26, 1938, January 29, 1939 and February 21, 1939.

21. Orders extending the time for the filing of the transcript of the record by defendant dated August 24, 1938, January 30, 1939 and February 21, 1939.

22. Journal entries of November 25, 1938, and December 28, 1938 as to the order of the court extending the time for defendant to file record on appeal.

23. Motion for an order for the transmittal of certain original exhibits as part of the record filed by intervenor-appellant, Destileria Serralles, Inc. on November 28, 1938.

24. Motion regarding transmittal of certain original exhibits as part of one record filed by plaintiff-appellee on January 26, 1939.

25. Order of February 11, 1939, for the sending up of certain original exhibits, to wit: Plaintiff's original Exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AW", "AL", "AM", and "AP"; intervenor-appellant's original Exhibit "J", and intervenor Puerto Rico Distilling Company's original Exhibits "B", "D", "E", "F", "G", "H" and "I".

26. Defendant's praecipe.

27. Motion of Destileria Serralles, Inc., dated March 6, 1939, praying for an order for the determination of what should be included in the transcript of the record.

28. Motion of plaintiff-appellee with reference to the transcript on appeal dated March 9, 1939.

29. This order.

30. Certificate of the clerk of the court as to the accuracy of the record.

The plaintiff-appellee has requested that the "Opinion, Findings of Fact and Conclusions of Law", entered by this court on May 6, 1938 in the case of *Rafael del Valle Pijem v. Rafael Sancho Bonet*, Treasurer of Puerto Rico, Equity No. 2237, be included in the transcript of the record on appeal but this the court considers unnecessary because the said "Opinion, Findings of Fact and Conclusions of Law" are embodied in an official document of this court, which is a court of record, and the said document may be referred to if necessary.

San Juan, Puerto Rico, March 15, 1939.

ROBT. A. COOPER,
U. S. District Judge.

CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF PUERTO RICO, ss:

I, Lulu G. Donohue, clerk of the United States District Court for the District of Puerto Rico do hereby certify that the foregoing is a true and correct copy of the transcript of record on appeal of papers and proceedings in the above-entitled case, on file and of record in my office as called for by the foregoing "Order settling contents of the Transcript of the Record", filed March 15, 1939.

In testimony whereof I hereunto set my hand and affix the seal of said court at San Juan in said District this thirteenth day of April, 1939.

LULU G. DONOHUE,
Clerk United States District Court for Puerto Rico.

PROCEEDINGS IN CIRCUIT COURT OF APPEALS.

On October 17, 1939, these causes came on to be heard together, and were fully heard by the court, Honorable Scott Wilson and Honorable Calvert Magruder, Circuit Judges, and Honorable Hugh D. McLellan, District Judge, sitting.

Thereafter, to wit, on January 12, 1940, the following Opinion of the Court was filed:

OPINION OF THE COURT.

January 12, 1940.

MCLELLAN, J. Bacardi Corporation of America, a Pennsylvania Corporation, filed a bill of complaint in the District Court of the United States for Puerto Rico, seeking to enjoin the defendant, Treasurer of Puerto Rico, and others from enforcing certain Acts of the Legislature of Puerto Rico. The alleged grounds for relief are in substance that these Acts contravene the Constitution of the United States, the Organic Act of Puerto Rico and a Treaty between the United States, Cuba and other countries. The District Court, having made certain findings of fact, concluded that the legislation attacked in the bill of complaint was not a valid exercise of the police power and was repugnant to the Commerce Clause of the Constitution of the United States. The District Court also concluded that the legislation was invalid because it violates the due process clause of the Constitution of the United States and of the Organic Act of Puerto Rico and because it deprives the plaintiff, appellee, of the equal protection of the Laws for which the Organic Act provides. The final decree from which these appeals were taken by the Treasurer of Puerto Rico, defendant, and by Destileria Serralles, Inc., intervenor, reads so far as need be stated as follows:

"It is ordered, adjudged and decreed: That the defendant Rafael Sancho Bonet, Treasurer of Puerto Rico, his successors, his agents and all those acting under his authority, and the Destileria Serralles, Inc., the Puerto Rico Distilling Company, their successors,

officers and agents, and any and all persons holding permits from the Treasurer of Puerto Rico under the alcoholic beverages laws of Puerto Rico, be and are hereby forever and perpetually enjoined and restrained from in any way enforcing or attempting to enforce against the plaintiff Bacardi Corporation of America the provisions of Sections 40 and 44 of Act No. 6 approved June 30, 1936, as amended by Act No. 149 approved May 15, 1937, and the provisions of Section 7 of said Act 149, insofar as said provisions prohibit complainant from marketing its products in Puerto Rico or shipping its products out of Puerto Rico with the Bacardi trade marks and labels attached thereto as now or hereafter authorized by the Federal Alcohol Administration, and from using its corporate name on its products; and also, from in any way enforcing or attempting to enforce against said plaintiff the provisions of Section 44 (b) of said Act No. 6 as amended by said Act No. 149, insofar as said provisions prohibit the plaintiff from shipping its products to the United States or elsewhere in bulk; * * *

In order that the history and declared purpose of the legislation thus stricken may appear, we set forth in the margin the pertinent portions of Act No. 115 approved May 15, 1936, and of

Act No. 115. "*Alcoholic Beverage Law of Puerto Rico*", approved May 15, 1936; Laws of 1936, regular session, pp. 610 *et seq.*

"Sec. 41.—* * *

B. After the thirty (30) days following the taking effect of this Act, no person shall engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits in Puerto Rico, unless such person is provided with a permit by the Treasurer of Puerto Rico authorizing him to engage in said business. * * *

C. The following persons shall be entitled to permits upon application:

(1) Every person who on February 1, 1936, possesses (possessed) a license or permit issued by the Government of Puerto Rico to engage in the business of distilling, manufacturing, rectifying, and bottling distilled spirits, and who is (was) on that date engaged in said business.

(2) Any other person who may fully comply with the following requisites:

(a) To file with the Treasurer of Puerto Rico an application to engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits, which application shall be made in the manner prescribed by the Treasurer of Puerto Rico and shall contain, among other particulars, the following specific information:

(1) That such person, by reason of his business experience or because of his financial position or business relations, will possibly begin

Act No. 6, approved June 30, 1936, effective July 1, 1936, which repealed Act No. 115 and was of an experimental character and was by its terms to expire September 30, 1937. Following these

operations within a reasonable period of time and that he will operate his business in accordance with both the Federal and the insular laws.

(II) That the demand for consumption in Puerto Rico and in the rest of the United States, for the class or classes of distilled spirits to be distilled, manufactured, rectified, or bottled, exceeds the production capacity of the holders of permits under this Act, priority to be given to such persons as may have received permits under clause C, paragraph 1, of this title, as well as to the production capacity of the holders of permits granted by the Federal Alcohol Administration to distill, rectify, bottle, and/or manufacture similar distilled spirits in continental United States.

(III) That the applicant has no intention to violate clause (h) hereinbelow transcribed.

(IV) That the applicant has no intention to violate clause (i) hereinbelow transcribed.

(V) That such business will not adversely affect those already established for the manufacture, distilling, rectifying, and bottling of distilled spirits in Puerto Rico."

Clauses (h) and (i) referred to under (III) and (IV) above, are as follows:

"(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.

(i) The production capacity of the existing distilleries, manufacturing plants, and rectifying and bottling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title."

Clause (g) of the same title, referred to in (i) of the title, reads as follows:

"(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided*, (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade name, or trade mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restrictions shall not apply to any new brand, trade name, or trade mark which may in the future be used in Puerto Rico."

Acts there appear in the margin the relevant provisions of Act No. 149 of 1937, including Section 1, Section 2, amending Section

Act No. 6, "Spirits and Alcoholic Beverages Act", approved June 30, 1936; Law of 1936, special session, pp. 44, et seq.

"To provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes.

Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear on the label the following phrase in English: '*Puerto Rican Rum*', in letters the size of which the Treasurer shall by regulation prescribe, as well as the name of the person owning the distillery where said rum was distilled. On the label of every alcoholic beverage shall also appear the word '*Distilled*', '*Rectified*', or '*Blended*', as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose. (at p. 76.)

"Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, under a trade mark or commercial name, because such trade mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided*, That this limitation shall not apply to any trade mark or commercial name, used for products manufactured in Puerto Rico prior to the approval of this Act; and *Provided*, further, That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer."

Act No. 149, approved May 15, 1937; Laws of 1937, regular session pp. 392-396.

"Be it enacted by the Legislature of Puerto Rico:

Section 1.—Section 1 is hereby amended by adding Section 1 (b) to Act No. 6, approved June 30, 1936, entitled '*An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administra-*

40 of Act No. 6 of 1936, Section 3, amending Section 44 of the same Act, Section 4, adding Section 44(b) thereto, and Section 7 thereof, to which the decree of the District Court refers.

tion and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes', which section shall be as follows:

'Section 1. The short title of this Act shall be Spirits and Alcoholic Beverages Act.'

'Section 1 (b).—*Declaration of Policy.* It has been and is the intention and the policy of this Legislature to protect the nascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market.

Section 2.—Section 40 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

'Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum*, in letters not less than five-sixteenths ($5/16$) of an inch high and of lines of one-sixteenth ($1/16$) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths ($4/5$) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth ($1/8$) of an inch high, said phrase to be not less than one and one-half ($1\frac{1}{2}$) inches long. On the label of every alcoholic beverage shall also appear the word *distilled, rectified, or blended*, as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; Provided, further, That the trade mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturers, distiller, rectifier, bottler, or canner appears.'

Section 3.—Section 44 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

'Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly,

These sections of Act No. 149 prohibit the manufacture (by holders of the requisite permit) of alcoholic beverages on which there appears whether on the container or elsewhere "any trade mark, brand, trade name, commercial name, corporation name or any other designation if said trade mark, brand, trade name, commercial name, corporation name or other designation, design or drawing has been used previously * * * anywhere outside the Island of Puerto Rico." This limitation is made inapplicable to

Provided, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936.'

Section 4.—Section 44 (b) is added to said Act No. 6, approved June 30, 1936, which section reads as follows:

'Section 44 (b).—Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; *Provided*, That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof, the Treasurer is empowered to authorize the sale of such stock in barrels of 40 gallons or more, either for sale in Puerto Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled.'

Section 7.—In regard to trade marks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits, prior to February 1, 1936, provided such trade marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date."

designations by a manufacturer, bottler or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936. By Section 7, this limitation or proviso is made applicable in regard to trade marks only to such "as shall have been used exclusively in the Continental United States * * * prior to February 1st, 1936, provided such trade marks shall not have been used, in whole or in part * * * outside of the Continental United States, at any time prior to said date."

Act No. 149, Section 4, also provides that with exceptions not here relevant distilled spirits may be shipped or exported from Puerto Rico or imported into Puerto Rico "only in containers holding not more than one gallon".

Bacardi Corporation of America aimed several blows at this legislation, and some of them took effect. We refrain, for the time being, from comment upon the apparent object and the avowed purpose of the Puerto Rican Legislature, because we want first to consider a question which needs for its determination nothing of this sort. The District Court was impressed with the suggestion that the Commerce clause of the Constitution of the United States invalidates the statutory provisions as to the use of trade marks and as to the maximum size of the containers required for shipment. The Commerce clause (Constitution, Article 1, Section 8, Clause 2) grants the Congress power "to regulate Commerce with foreign nations, and among the several states, and with the Indian Tribes." By necessary implication, it prevents a state from regulating such commerce. But Puerto Rico is not a state. It is an organized Territory of the United States though not yet "incorporated" into the Union. *Puerto Rico v. Shell Co.*, 302 U.S. 253, and the indubitable right of the Congress to regulate the commerce of Puerto Rico is founded on the Constitutional power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." (Constitution, Article IV, Section 3, Clause 2). The power is in no direct sense dependent upon the Commerce clause which as this court has said "does not extend to Puerto Rico". *Lugo v. Suazo*, 59 F. (2d) 386,

390. *Cf. Inter-Island Steam Navigation Co. v. Hawaii*, 96 F. (2d) 412.

The decree of the District Court declaring such legislation unconstitutional can not be affirmed upon the ground that the Puerto Rican statutes violate the Commerce clause of the Constitution of the United States.

The next question is whether the Puerto Rican statutes constitute a valid exercise of the police power of the Insular Legislature in view of the due process clause of the Constitution of the United States and of the Organic Act for Puerto Rico. And in discussing the Insular police power we shall consider whether it is relevantly narrowed either by the Federal Alcoholic Administration Act or by the Convention between the United States and Cuba.

The police power of the Puerto Rican Legislature depends upon the Organic Act for Puerto Rico passed by the Congress of the United States in 1917. This Act organizes the Territory and erects "the typical American governmental structure consisting of three independent departments—legislative, executive and judicial" *Puerto Rico v. Shell Co.*, *supra*. To the Insular Legislature, the Organic Act extends legislative authority as "to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal all laws and ordinances of every character in force in Porto Rico or municipality or district thereof on March 2, 1917 in so far as alteration, amendment, modification or repeal may be consistent with the provisions of this chapter." U.S. Code, Title 48, Section 821.

Clearly enough, the Organic Act of Puerto Rico authorizes legislation for the control of the manufacture and traffic in rum and other ardent spirits unless such legislation trespasses upon a field forbidden by the Constitution or by the Congress.

The appellee urges that the territorial legislation is invalid because it conflicts with the Federal Alcoholic Administration Act, and as examples of such asserted conflict, says:

"(a) American Bacardi has been authorized under the Federal Law to use on its product to be shipped from Puerto Rico certain labels which have been presented in evidence. Under the local statute the plaintiff is prohibited from using them (Section 44 of Law No. 6) ;

(b) The Federal statute authorizes shipment in bulk in containers of more than one gallon, while the local statute (Section 44 (b) prohibits such shipments."

As to labels, the Federal Alcohol Administration Act, aiming at unfair competition and other unlawful practices, forbids the introduction into interstate or foreign commerce of liquor unless labelled in accordance with regulations established by the Administration in such a way as to prevent deception of the consumer and the like. Such being the purpose of the Act, its effect was not to deprive the Legislature of Puerto Rico of the right to enact the territorial statute restricting the use of labels.

Nor does it seem to us correct to say, as does the appellee, that "the Federal statute authorizes shipment in bulk in containers of more than one gallon". What the statute does is to forbid the disposition of liquor in bulk except in pursuance of regulations of the Federal Alcohol Administration. We cannot read into this statute an intent upon the part of the Congress to bar the territorial statutes governing shipments in bulk.

Consistent with the view that the Federal Alcohol Administration Act was not intended to deprive territories of the right, in the exercise of their police powers, to limit the use of labels, or to limit the size of containers to be used under certain circumstances, is the form of permit received by the appellee, which is expressly "conditioned upon compliance with the laws of all states" in which the applicant engages in business. We are concerned here not with Congressional power but with the question whether Congress has so exercised that power as to close the door to the territorial legislation here considered. In *McDermott v. Wisconsin*, 228 U.S. 115, on which the appellee relies, the right of a state to impose burdens upon or discriminate against Interstate Commerce was at stake and we think that case not at all controlling upon the present

aspect of the case at bar. The District Court was right in not including among the conclusions of law requested by the appellee the ruling "that Sections 40, 44 and 44 (b) of Act No. 6 of June 30, 1936 as amended by Act No. 149 of May 15, 1937 are invalid as contrary to the Federal Alcoholic Administration Act."

The appellee which had acquired by contract the right to use the trade marks of the Cuban Bacardi Corporation urges that the District Judge erred in the refusal to rule in substance that the legislation here in question "prohibiting the use of certain trade marks conflicts with the * * * trade mark convention of February 20, 1929, between the United States and Cuba and is, therefore, invalid." As to this contention the District Judge said:

"It is unnecessary to express any opinion as to the allegations in the complaint to the effect that the challenged legislation violates the Treaty between the United States and Cuba. If it were necessary I would be disposed to hold against the contention of the plaintiff. The Treaty gives no preferential advantage to a citizen of Cuba. Any right or privilege which the Treaty creates would be subject to a proper exercise of the police power."

A summarization of the Convention would prolong this opinion unduly and is needless. Its purpose was to prevent piracy of trade marks, a matter which is not here involved. It was not intended to have and does not have the effect of invalidating local laws and regulations of the type here in question. We think the District Court's refusal to rule that the legislation was invalid by virtue of the Convention between the United States and Cuba was right.

We come now to the question whether the provisions of the Puerto Rican legislation forbidding in substance, and subject to limitations heretofore stated and hereafter referred to, the making of rum, on the container of which or elsewhere, there appears a trade mark or corporation name previously used outside of Puerto Rico and forbidding the shipping of rum in containers holding more than a gallon violate the due process clause appearing both in the Constitution of the United States and the Organic Act of Puerto Rico.

The due process clause of the Fifth Amendment to the Constitu-

tion is so identical with Section 2 of the Organic Act providing against the enactment of any law depriving any person of life, liberty or property without due process of law as to preclude any detailed discussion of what parts of the Federal Constitution extend to Puerto Rico.

The District Court ruled that "the provisions of Act No. 6 of June 30, 1936, as amended by Act No. 149 approved May 15, 1937, prohibiting the use of certain trade marks and corporate names, * * * violate the due process clause of the Constitution of the United States and the Organic Act of Puerto Rico and are invalid." A like ruling was made with reference to Section 44 (b) of Act No. 6 as added by Act No. 149 of 1937 "insofar as it prohibits the exportation of rum legally manufactured in Puerto Rico in containers of more than a gallon." In his opinion, the District Judge having called attention to the intent and policy of the statutes as expressed by the Legislature and the restrictive use of trade marks and corporate names for which the statutes provide expressed the view that "it is difficult to see how the 'evil' mentioned in the preamble was corrected by the attempted 'remedy' ". Later, the court said:

"If the Legislature of Puerto Rico desires to eliminate all competition by foreign capital as a means of protecting the liquor industry, and so as to avoid the increase and growth of financial absenteeism, there is a very simple and direct way to accomplish this purpose. I know of no reason why the Legislature of Puerto Rico may not, as Pennsylvania has done, deny to any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico. It may limit the number of licenses which may be granted even to residents and citizens of Puerto Rico. I do not mean to say that such a policy would be wise or desirable. That is a legislative question. But, if the evil which the legislation here under consideration condemns is to be eliminated, some method other than that provided must be adopted."

In saying that Puerto Rico could constitutionally "deny any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico", the District Court was right. *La Tourette v. McMaster*, 248 U.S. 465, supporting the constitution-

ality of the legislative exclusion of non-resident insurance agents, and *Premier-Pabst Co. v. Grosscup*, 298 U.S. 226, where the constitutionality of an act forbidding the sale of beer within Pennsylvania unless duly licensed, and forbidding the issue of a license to a corporation unless all of its officers and directors and 51% of its stockholders were and for two years had been residents of the state, was conceded.

But we think that having the absolute power to prohibit foreign corporations from manufacturing or selling intoxicants the Puerto Rican Legislature had the right to prescribe the conditions under which such business might be conducted. The greater power includes the less. *Ziffrin v. Martin*, decided November 13, 1939 by the Supreme Court of the United States; *Seaboard Air Line Railway v. North Carolina*, 245 U.S. 298, 304. To say the least, the legislative power to prohibit involves a wide discretion as to the conditions which may be imposed in lieu of total prohibition.

The legislative purpose to protect the nascent liquor industry of Puerto Rico from all competition by foreign capital, so as to avoid the increase and growth of financial absenteeism and to favor this domestic industry and to protect it against any unfair competition, was legitimate. And we may not strike down any legislation designed to effectuate such purpose just because it may be thought unlikely completely to accomplish the desired result. Whether the statutes prohibiting the use of certain trade marks and corporate names and whether the legislation forbidding shipments in bulk (presumably passed in part to prevent an evasion of the trade mark prohibition) will accomplish the desired result is not the question for our determination. The Legislature of Puerto Rico possessing "substantially all the local legislation powers of a state legislature, in all respects here involved" including the local police powers particularly applicable to the liquor business, has manifested its faith in the efficacy of its policy through three successive sessions, the session of 1936, the special session of 1936 and the regular session of 1937, and it is not for us to say whether its faith is well founded. Even if we knew enough about the matter

to form a judgment as to the wisdom of these statutes we should be exceeding our function were we to attempt to substitute our judgment for that of the Legislature. As said by the Supreme Court, in *Nebbia v. New York*, 291 U.S. 502, 537, "with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal. * * * Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power."

Bearing in mind that doubt is not enough, that unconstitutionality must clearly appear in order to warrant us in holding legislation void, and being unable to say that the statutes here questioned so lack any reasonable basis as to be arbitrary or capricious, we think they should not be invalidated as repugnant to the due process clause of the Constitution of the United States or the Organic Act for Puerto Rico. *St. Joseph Stock Yards Company v. United States*, 298 U.S. 33, 51; *Standard Oil Co. v. Marysville*, 279 U.S. 582; *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 391.

The District Court ruled that "the provisions of Act No. 6 of June 30, 1936 as amended by Act No. 149 approved May 15, 1937, which restrict the use of certain trade marks and corporate names, discriminate arbitrarily against the plaintiff; violate the equal protection clause of the Constitution of the United States and the Organic Act of Puerto Rico and are invalid."

It would seem that the equal protection clause appearing in the 14th Amendment of the Constitution of the United States limits the powers of the states and is inapplicable to Puerto Rico. But this is of no importance here because the Organic Act for Puerto Rico expressly provides that "no law shall be enacted in Puerto Rico which * * * shall deny to any person therein the equal protection of the laws." The statutory provision forbidding the shipping of rum in bulk, which applies to all shippers, need not be

considered in this connection. The above ruling relates only to the provisions prohibiting the use of certain trade marks and corporate names. As to this aspect of the case, the District Court said, "whether so intended or not the Act has the appearance of being so framed as to exclude only the plaintiff. It is difficult to conceive of a more glaring discrimination." We think the court's ruling that the statutes are invalid as constituting a denial of the equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee was the only manufacturer affected by the particular statutory provisions here considered. But they applied to all who might later engage in the business. The clause in the Act permitting continuance of the use of labels or brands already established in Puerto Rico prior to February 1, 1936, does not unduly discriminate against foreign corporations which had not entered the field before that time. We can not say without doubt upon the subject, that such a statute is unusual or capricious or unjustly discriminatory. In *Rapid Transit Corp. v. New York*, 303 U.S. 573, 578, it is said: "Although the wide discretion as to classification retained by a legislature, often results in narrow distinctions, these distinctions, if reasonably related to the object of the legislation, are sufficient to justify the classification. * * * Indeed, it has long been the law under the 14th Amendment that 'a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it.'" See also *Borden v. Ten Eyck*, 297 U.S. 251; *United States v. Rock Royal Co-op. Inc.*, 307 U.S. 59 S.C. 993. Upon the principles heretofore stated and which must govern us in determining the constitutionality of an act of a legislature possessed of ample police powers, we cannot declare any of the statutory provisions here questioned repugnant to the equal protection clause of the Organic Act of Puerto Rico or if applicable the same clause appearing in the 14th Amendment to the Constitution of the United States.

We have refrained from stating many of the facts found by the District Court as to the quality of the appellee's product, the

amounts expended on its plant and equipment, whether before or after receiving the requisite permit for manufacturing liquor, or whether before or after notice of the legislation here questioned, because none of these considerations changes the result. The validity of these statutes can not be made to depend upon the appellee's expectation that in the exercise of its police powers a law making body may not change its policies or its laws. *Mahoney v. Triner Corp.*, 304 U.S. 401.

Nor have we deemed it necessary to state the facts pertinent thereto or to decide whether as urged on behalf of the appellants the plaintiff appellee is estopped to question the validity of the challenged statutes. We think the provisions of the Acts here assailed are valid.

The decree of the District Court is reversed, with costs on appeal to each appellant, and the case is remanded to that court with directions to dissolve the injunction and to dismiss the bill of complaint.

On the same date, to wit, January 12, 1940, the following Final Decree was entered in each case:

FINAL DECREE.

January 12, 1940.

This cause came on to be heard October 17, 1939, upon the transcript of record of the District Court of the United States for Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now, to wit, January 12, 1940, here ordered, adjudged and decreed as follows: The decree of the District Court is reversed, with costs on appeal to the appellant, and the case is remanded to that court with directions to dissolve the injunction and to dismiss the bill of complaint.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

Thereafter, to wit, on January 18, 1940, mandate was stayed in each case until further order of court.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certifying that the foregoing is a true copy of the transcript of record in the causes in said court heard and determined, numbered and entitled,

No. 8455.

RAFAEL SANCHO BONET, TREASURER,
DEFENDANT, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

No. 8456.

DESTILERIA SERRALLES, Inc.,
INTERVENOR, APPELLANT,

v.

BACARDI CORPORATION OF AMERICA,
PLAINTIFF, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-third day of January, A. D. 1940.

[SEAL]

ARTHUR I. CHARRON, *Clerk.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 22, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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